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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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KYLE FELLERS, et al

v.

MARCY KELLEY, ET AL

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* 24-cv-311-SM-AJ

* November 21, 2024

* 1:22 p.m.

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TRANSCRIPT OF EVIDENTIARY HEARING
DAY ONE - AFTERNOON SESSION
BEFORE THE HONORABLE STEVEN J. MCAULIFFE

APPEARANCES:

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I N D E X

<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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KYLE FELLERS:

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1 P R O C E E D I N G S

2 MR. KOLDE: Your Honor, I did talk with opposing
3 counsel over the lunch hour. I realized there was a couple
4 more issues, very brief, that I wanted to talk to Mr. Fellers
5 about.

6 THE COURT: Of course. Of course.

7 MR. KOLDE: We're going to move through it rather
8 quickly before cross, if that's all right with the Court.

9 THE COURT: Of course.

10 MR. KOLDE: May I proceed, your Honor?

11 THE COURT: You may.

12 CONTINUED DIRECT EXAMINATION OF KYLE FELLERS

13 BY MR. KOLDE:

14 Q. Mr. Fellers, after the game did you receive any
15 documents from the school district as a result of what
16 happened at the September 17th game?

17 A. Yes. I received a no trespassing order on I
18 believe Friday.

19 Q. Was that a day or two after the game?

20 A. A few days. I think the game was Tuesday.

21 Q. And how did you receive that no trespass order?

22 A. I had a message on my voicemail. I wasn't in town
23 at the time. When I got into town, I went to the police
24 station and was served.

25 Q. So the police served you with a no trespass order?

1 A. That's correct.

2 Q. And which police station did that occur at?

3 A. The Bow Police Department.

4 Q. Okay. And I'm going to show you -- we won't go
5 through it line by line, but I'll show you what's been
6 admitted as Plaintiffs' Exhibit No. 8.

7 MR. KOLDE: If we could minimize it a little bit so
8 we could see more of the document.

9 Q. Are you able to read that or is that too
10 fine-grained for you?

11 A. Yeah, I can read it.

12 Q. All right. Is that the no trespass order that you
13 received on September 19th at the Bow PD?

14 A. That is correct.

15 Q. All right. And you don't have to go through it
16 line by line or give a legalistic answer, but give the gist of
17 what this no trespass order was ordering you not to do.

18 Do you need to take a moment to read it?

19 A. I mean, as far as my interpretation or
20 understanding, I was not allowed to come on any of the Bow
21 district schools grounds, preventing me from dropping off my
22 children, picking them up, which I do regularly, picking them
23 up from practice, attending games. Essentially to stay away
24 from the school district and any away games. Stuff like that.

25 Q. Okay. And in the second paragraph it states, "The

1 protest was designed to and had the effect of intimidating,
2 threatening, harassing, and discouraging that student as well
3 as other students from playing."

4 Did you see that in the no trespass order when you
5 received it from the Bow PD?

6 A. Yes.

7 Q. Did you agree or disagree with that statement?

8 A. Well, I wholeheartedly disagreed that I was
9 threatening, harassing, bullying, intimidating, discouraging
10 anybody.

11 Q. And, again, just to keep things moving, can you
12 summarize for the Court how this no trespass order impacted
13 your life with regard to supporting your kids and your
14 daughter specifically?

15 A. Uh-huh. Well, I mean, I have custody half the time
16 with my kids, and I'm pretty active with them.

17 So I'm pretty flexible as far as my work. I
18 usually drop them off in the morning at the middle school as
19 well as the highschool, and then I usually pick up -- I can
20 pick them up if my son doesn't take the school bus, and I
21 usually have to pick up my daughter after soccer practice
22 which usually ends around 5:30.

23 My son also ran cross-country. He was --

24 Q. Kyle, too much information.

25 How did this impact you?

1 A. I mean, it just threw a wrench in the gears as far
2 as the ability to get the kids to school and get them home.

3 Q. So you couldn't pick up your daughter from soccer
4 practice, yes?

5 A. That's correct.

6 Q. You couldn't go to watch the games, correct?

7 A. That's correct.

8 Q. And at least initially you couldn't even pick up
9 your son from school?

10 A. That's correct.

11 Q. All right. And, again, without going into details,
12 did Marcy Kelley -- prior to the court hearing that we had on
13 October 8th, did Marcy Kelley issue some addenda that changed
14 some of the conditions of the no trespass order?

15 A. Yeah. I e-mailed her to explain that I was going
16 to have that --

17 Q. Just answer the question.

18 Did she change it with addenda?

19 A. Yes.

20 Q. Don't answer the next question, please.

21 A. Okay.

22 Q. Listen to the question and answer the question.

23 Did she change it with addenda?

24 A. She did.

25 Q. All right. And did that allow you to at least pick

1 up your son?

2 A. It did.

3 Q. Okay. But you still could not pick up your
4 daughter from soccer practice?

5 A. I still could not.

6 Q. And until the Court's order on October 8th, you
7 still could not go to the soccer games, correct?

8 A. That's correct.

9 Q. And those are both activities that you had wanted
10 to engage in, correct?

11 A. That I --

12 Q. You had wanted to do both of those things?

13 A. Yes. Absolutely.

14 Q. All right. I think this is close to the last
15 question, if not the last question.

16 Are you worried that if you engage in the same kind
17 of silent, nondisruptive protest by wearing the pink wristband
18 to one of the upcoming Bow athletic events in December or
19 January, that you are at risk for receiving a similar no
20 trespass order from the Bow School District?

21 A. Absolutely, yes.

22 Q. All right. And is that threat keeping you from
23 wearing the pink wristband to those events unless and until
24 the Court gives you legal protection to do so?

25 A. Yes.

1 MR. KOLDE: No further questions at this time, your
2 Honor.

3 THE COURT: All right. Thank you, Mr. Kolde.
4 Mr. Cullen.

5 MR. CULLEN: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. CULLEN:

8 Q. Good afternoon, Mr. Fellers.
9 I'll be considerably shorter, I hope, than your
10 counsel.

11 So you got a no trespass order and you went to
12 Superintendent Kelley on two different occasions asking her to
13 modify that order, correct?

14 A. Yeah. Maybe -- yeah, two times sounds about right.

15 Q. And she in fact modified it both times, right?

16 A. Yes.

17 Q. Okay. Now, you were aware back in the spring of
18 this year, of 2024, that the U.S. Department of Education had
19 issued updates on Title IX, correct?

20 MR. KOLDE: Objection to the extent it calls for a
21 legal conclusion.

22 MR. CULLEN: Well, I don't think I'm asking for
23 conclusions.

24 THE COURT: Sustained. He's a fact witness. He's
25 not a legal witness.

1 MR. CULLEN: I'm not asking -- I'm just asking if
2 he's aware that there was a modification issued. I'm not
3 asking him to interpret what it was, your Honor.

4 MR. KOLDE: I don't think he even knows what it is,
5 but he can answer if he does.

6 THE COURT: All right. Overruled.

7 Go ahead.

8 Q. Do you know if there were modifications proposed to
9 Title IX by the Department of Education?

10 A. I might have heard something on the news about it.
11 I'm not sure exactly what those modifications are.

12 Q. Sure. I tell you what, why don't we pull up
13 Exhibit E, please.

14 Do you recognize this document, sir?

15 A. Yes.

16 Q. And it's an e-mail from you, isn't it?

17 A. Yes, it is.

18 Q. It's an e-mail dated August 1, 2024, right?

19 A. That is correct.

20 Q. The very day that the Department of Education's
21 modifications to Title IX were going to come into place,
22 right?

23 A. I'm not aware if that was the date or not.

24 Q. And you wrote -- well, look at the end of the --
25 we'll go through it, but the end of the second paragraph, does

1 that not say, "This happened on the same day the Biden-Harris
2 Administration rewrites Title IX to appease a mentally ill
3 cult."

4 MR. CULLEN: Would you highlight that for him,
5 please?

6 A. So your question was the date of my e-mail, I
7 believe?

8 Q. I asked you -- yeah, I asked you if the date of
9 your e-mail was the same date that the Title IX was changed.
10 I think you were suggesting that you didn't realize that the
11 Title IX had changed at all, if I'm not wrong.

12 Did I misinterpret that?

13 A. I guess -- did this happen on the day of the boxing
14 event or did this happen on the day of my e-mail?

15 Q. I guess I was under the impression you were trying
16 to suggest to the Court that you were unaware of any changes
17 to Title IX. Is that not -- did I misinterpret that?

18 MR. KOLDE: Objection. Misstates prior testimony.

19 THE COURT: Overruled.

20 Q. You can answer.

21 A. I guess -- can you ask the question again?

22 Q. Yeah. I was under the impression that you were
23 suggesting to this Court that you were unaware that Title IX
24 had been updated or modified by the Department of Education.

25 THE COURT: I think he said he was unsure if it was

1 on that date, but whatever.

2 MR. CULLEN: Okay.

3 A. I guess I meant to say I'm not aware of the exact
4 changes of what happened on Title IX.

5 Q. Okay. But it was your opinion that it had been
6 changed and rewritten by the Biden Administration, right?

7 A. Yes.

8 Q. Okay. And that was done to "appease," your words,
9 "a mentally ill cult," right?

10 A. That is correct. Those are my words.

11 Q. And that's not consistent with your earlier
12 testimony in this court that you have no concerns about gender
13 issues at all outside of the playing field, right?

14 MR. KOLDE: Objection. Misstates prior testimony.

15 THE COURT: Overruled. There's no jury. It's me.

16 Q. So you can answer the question.

17 MR. KOLDE: You may answer.

18 THE COURT: I don't know what's wrong with my
19 screen.

20 A. What's the question again?

21 THE COURT: There's no question pending.

22 MR. CULLEN: Well, there was a question. There was
23 an objection, and it was overruled. So the question --

24 MR. KOLDE: I think the Judge is trying to see the
25 exhibit.

1 MR. CULLEN: I apologize.

2 MR. KOLDE: Give him a second.

3 MR. CULLEN: Oh, no, no. I thought you were
4 looking for the transcript of this.

5 THE COURT: I was. I don't know what's going on
6 with this monitor.

7 All right. Go ahead.

8 MR. CULLEN: I can give you a copy of it.

9 Oh, it looks like it's back up.

10 THE COURT: Yeah, it is for now.

11 Do you have a copy?

12 MR. CULLEN: Yeah.

13 THE COURT: Thanks.

14 Thank you. I appreciate it.

15 Q. So I think the question was, to the extent that
16 you -- you had testified earlier in this matter, didn't you,
17 that outside of this women's sports arena you didn't have any
18 concerns about transgender people, right?

19 A. I do not have any concerns about transgender
20 people.

21 Q. And yet on August 1st you referred to the changes
22 as being made to appease a mentally ill cult?

23 A. Yes.

24 Q. Who's that?

25 A. A cult in my mind is a group of individuals who

1 squash any type of dissent on their beliefs. And whether --
2 if someone agrees that they're transgender, I have the right
3 to believe that they're still the biological sex they were
4 born with.

5 Q. So can I take that to mean that when you referred
6 to a mentally ill cult, you were talking about people who
7 promoted views on transgender on which you disagreed?

8 A. I would be more apt to say it's more of the folks
9 who try to squash other people's opinion or speech regarding
10 their belief system.

11 Q. Okay. That's what you meant when you wrote it in
12 this e-mail?

13 A. Yeah.

14 Q. And at the beginning of the e-mail you write, "For
15 those who are still living under a rock or in denial about the
16 ramification of biological boys playing girls sports, here is
17 Exhibit A on your delusional fantasies," right?

18 A. That is correct.

19 Q. And, by the way, you mentioned, I think, that you
20 didn't receive any response to this, correct?

21 A. I'm pretty sure I didn't get a response.

22 Q. You didn't get sanctioned for it in any way?

23 A. No. I just didn't get a response.

24 Q. Didn't get a no trespass order?

25 A. No.

1 Q. Didn't get a rebuke of any sort, did you?

2 A. No.

3 Q. It sounds like you try to get to most of these
4 girls' soccer games because your daughter plays for the team?

5 A. I'm sorry?

6 Q. It sounds as though you go to most of the girls'
7 varsity soccer games?

8 A. I try to go to as many as I can, yeah.

9 Q. Did you go to the away game in Laconia that Bow
10 played in?

11 A. I did not go to that game.

12 MR. CULLEN: Stacy, could you pull up Exhibit F,
13 please, Defendants' Exhibit F? And if you could just blow it
14 up a little bit for all of us. Especially me. Just scan down
15 a little just so the witness can see the top of it, if you
16 would.

17 Q. The e-mail here, which has been admitted as a full
18 exhibit, indicates a message sent by a parent to Mike
19 Desilets. It says: Subject matter, concerned parent-
20 Plymouth game (girls' soccer).

21 And in the third paragraph it mentions a few things
22 that this woman reports: "Several Bow parents discuss wearing
23 dresses to the game, buying anti-trans warm-up shirts for the
24 Bow players, making signs in protest of trans athletes, and
25 generally planning on how they can heckle and intimidate this

1 player." Do you see that?

2 A. I see the paragraph you're referring to, yes.

3 MR. CULLEN: Can you just highlight that also for
4 us?

5 Q. Now, you weren't at this Laconia game, but did you
6 hear any comments like this in the buildup to the Plymouth
7 game yourself?

8 A. I wasn't at the game, and I did not hear any of
9 this type of discussion on the lead-up to the Plymouth game.

10 Q. Are there any of the items mentioned by this parent
11 that you would agree would be inappropriate on the sidelines
12 of a girls' varsity soccer game?

13 MR. KOLDE: Your Honor, I just object insofar as it
14 calls for a legal conclusion. If it's just asking for him to
15 speak as a lay person, we don't have any objection.

16 THE COURT: All right.

17 Q. Just as a lay person in your opinion.

18 A. You're asking me if any of these are appropriate?

19 Q. Are any of these inappropriate to take place at the
20 sideline?

21 Let me start with Bow parents, presumably males,
22 wearing dresses to the game. Would that be in your view
23 something that would be okay?

24 A. No. I never did that. So I wouldn't recommend
25 someone else doing it.

1 Q. Right. And I'm not suggesting that you did, sir.
2 How about buying anti-trans warm-up shirts for the
3 Bow players?

4 A. What exactly is an anti-trans warm-up shirt?

5 Q. How about making signs to protest trans athletes?

6 A. Is that what's mentioned in this letter?

7 Q. I believe that's on the bottom of that paragraph,
8 "making signs in protest of trans athletes." It's in front of
9 you right there.

10 A. I guess if the signs are -- well, I don't know. I
11 guess I don't have a problem with making signs as long as it's
12 in good taste.

13 Q. And how about planning to heckle and intimidate the
14 player, would you agree that that wouldn't be appropriate?

15 A. Absolutely not.

16 Q. And you would agree I hope -- but I'll ask, I
17 guess. You would agree, wouldn't you, that if there was a
18 concern that adults were going to come to the game and
19 potentially heckle and intimidate the player, calling the
20 police to come to the game would be a good idea, right?

21 A. I don't know if I agree with that.

22 Q. You go to football games, right? American
23 football?

24 A. I haven't been to a Bow football game.

25 Q. Okay. There's a lot of police presence in

1 Foxborough, though, right?

2 A. I've never been to a Foxborough football game, I
3 assume there is, but I've never seen a police officer at a
4 girls' soccer game.

5 Q. So you don't necessarily have an opinion as to
6 whether or not it would be appropriate to call the police to
7 come to a game in which there is a suggestion that parents
8 might show up and heckle and intimidate a transgender player
9 for the other side?

10 MR. KOLDE: Objection. Misstates prior testimony.

11 THE COURT: Overruled. You don't contest the fact
12 that it's inappropriate under the First Amendment to heckle or
13 target a child engaged in extracurricular activities, right?

14 MR. KOLDE: No. I just don't like opposing counsel
15 putting words in my client's mouth.

16 THE COURT: Well, that's cross-examination. If
17 they don't fit, you just spit them out.

18 A. I don't believe anybody should intimidate anybody.
19 I am a free speech absolutist, but I still think that you
20 should be respectful to anybody.

21 Q. Okay. And with respect to the September 17th game,
22 you knew then that Parker Tirrell was going to be potentially
23 playing for the other side, correct?

24 A. Yes.

25 Q. Okay. And you went to the game, and for the first

1 half at least you were on the sidelines?

2 A. Yes.

3 Q. Seven to eight feet off the field from your
4 testimony I think, right?

5 A. Yes.

6 Q. And during that first half it sounds like you
7 couldn't identify that Parker Tirrell was even on the field?

8 A. I wasn't looking, no.

9 Q. You weren't looking?

10 A. I wasn't looking to try to identify anybody. I was
11 just there to watch the game.

12 Q. But certainly Tirrell didn't stand out in any way
13 that caught your attention?

14 A. Not at all.

15 Q. Okay. You mentioned I think that you were the one
16 who purchased the wristbands?

17 A. I did.

18 Q. And you purchased them with a -- when you purchased
19 them, did they already have the pink ribbon on one side of
20 them?

21 A. Yes.

22 Q. When you wore your wristband at the beginning of
23 the second half of that game, was the pink ribbon the part
24 that you were displaying on your wrist or was it the XX that
25 you were displaying?

1 A. I can't remember if the Xs were just over that or
2 if it was on the opposite side. I'm not a hundred percent
3 sure.

4 MR. CULLEN: Stacy, can you pull up Exhibit 4?
5 Plaintiffs' Exhibit 4. I'm sorry.

6 Q. Is this your arm or is this somebody else's?

7 A. It's not my arm.

8 Q. Okay. On this particular band, you can see that
9 the XX is not imprinted over the symbol?

10 A. That's correct.

11 Q. Does that refresh your recollection in any way as
12 to where it was on yours?

13 A. I don't think this was my wristband, no.

14 MR. CULLEN: Why don't we go to Exhibit 19. I
15 think that's the pile of wristbands.

16 Q. At the very top of this pile you can see one
17 wristband bearing the pink ribbon that you mentioned?

18 A. Yes.

19 Q. And on every other one all you see is the symbols
20 XX or NAD or the female fertility symbol?

21 A. Yes. But the pink ribbon could be on the opposite
22 side.

23 Q. Oh, I don't disagree. You said all these bands had
24 a pink ribbon on them?

25 A. Yes.

1 Q. You just seemed uncertain as to whether the XX was
2 imprinted over the ribbon or whether they were on opposite
3 sides.

4 Now having looked at this, do you agree with me
5 that they're on the opposite sides?

6 A. I believe your question was, was the pink ribbon
7 exposed, and I wasn't sure because it could have been on the
8 opposite side of the Xs.

9 Q. Right. And to the extent then that I was unclear,
10 you don't disagree that one side of these would have been the
11 XXs or other symbols and the other side would have been the
12 ribbon?

13 A. That's possible.

14 Q. Okay. And you mentioned the Olympics in your
15 e-mail of August 1, 2024, the one you sent to Ms. Kelley and
16 the board?

17 A. Yes, the Olympics.

18 Q. Yeah. The Olympics in Paris, right?

19 A. Yes. The women's boxing competition.

20 Q. In particular?

21 A. Right.

22 Q. And in particular you remember at those Olympics,
23 and starting at those Olympics, that several female boxers
24 started using an X symbol during the Olympics, right?

25 A. I don't recall that.

1 Q. Do you recall people running through the stadiums
2 with XX flags?

3 A. I didn't watch the Olympics that closely.

4 Q. Okay. And you haven't seen that since then?

5 A. No.

6 MR. CULLEN: Stacy, can you go to Plaintiffs'
7 Exhibit 2, please?

8 Q. I believe you testified that this didn't go
9 directly to you, correct?

10 A. That is correct. A bunch of these e-mails do not
11 go to me.

12 Q. And do you know why that is?

13 A. I have no idea. There's e-mails that they sent to
14 us parents about busing transportation, and I don't get them.
15 The mother of my children usually has to forward them to me.

16 Q. Okay. But you did see this e-mail when Andy Foote
17 responded to it, right?

18 A. Yes. I was cc'd on it, but I didn't look too
19 carefully at it. It went to my Yahoo e-mail address and I get
20 a ton of spam and junk mail that way, and I don't pay too much
21 attention to my Yahoo address.

22 Q. And you would agree with me that the e-mail that
23 went out to the families and that was ultimately cc'd to you
24 by Mr. Foote includes the language from Mr. Desilets, "I
25 understand that there's some differing opinions regarding

1 tomorrow's game."

2 Do you see that?

3 MR. CULLEN: Stacy, do you mind highlighting that
4 in the middle?

5 A. Yes, I see that. "That's perfectly fine."

6 Q. And that's how he concludes, right? "And that is
7 perfectly fine," correct?

8 A. Yes.

9 Q. And he warns that, "Inappropriate signs,
10 references, language, or anything else present at the game
11 will not be tolerated," right?

12 A. That's the next line, yes.

13 Q. Now, you didn't know -- at the time you saw this
14 e-mail on the morning of the 17th you didn't even know that
15 the XX wristbands were going to be at the game, right?

16 A. Can you say that again, please?

17 Q. Yeah. Sorry. I switched my question halfway
18 through. I apologize.

19 On the morning of the 17th did you know that Andy
20 Foote was going to bring his bag of wristbands to the game?

21 A. On the 17th? It's possible. I don't quite
22 remember.

23 Q. When did Andy tell you that the captains -- or the
24 kids had decided not to wear the wristbands that he had
25 prepared that you had purchased?

1 A. I don't think he ever told me. I think it was my
2 own daughter that told me that the school basically pressured
3 them not to do it.

4 Q. That's what she told you?

5 A. I believe that's what she told me, yes.

6 Q. Okay. And who did she say said that?

7 A. I don't recall exactly. I assume it was just
8 school officials.

9 Q. And with respect to the conversations you had with
10 Mr. Foote that morning -- after he sent his e-mail, did you
11 have conversations with him?

12 A. I did not.

13 MR. CULLEN: Could you bring up Andy's e-mail,
14 Exhibit 18? And, again, if you could blow that up a little.

15 Perfect. Thank you.

16 Q. This is the e-mail you were talking about that you
17 were cc'd on? I believe you're the second line on the "to"?

18 A. Yes. I was cc'd on this, yeah.

19 Q. You mentioned it went to your Yahoo account, and
20 that's you, kylefellers@yahoo.com?

21 A. Yeah.

22 Q. After you got this cc, did you have any
23 conversations with Mr. Foote prior to showing up at the game
24 yourself?

25 A. See, I don't think I actually saw this e-mail till

1 after the game.

2 Q. Did you have any conversations on the morning of
3 the 17th with Mr. Foote?

4 A. I don't believe so. I don't recall.

5 Q. And just to be clear, I said morning. So how about
6 in the afternoon prior to the game, did you have any
7 conversations with him then?

8 A. Prior to the game? I don't think so. I was
9 working that day. So I came from work. I picked up my
10 sister.

11 Q. I'll get to another second question in a second,
12 sir.

13 At the game in the second half you now had your
14 wristband on, correct?

15 A. At halftime that's when Andy gave me the wristband,
16 yes.

17 Q. And at this time you walked back to your car to get
18 your phone, correct?

19 A. Yep.

20 Q. Checked your e-mails and things then?

21 A. No, I didn't. No. Well, cell phone service at the
22 school isn't very good. So I just picked up the phone and
23 checked to see if there were any texts, calls, and I don't
24 recall any.

25 Q. Okay. When you got back to the game, you've got

1 your short-sleeve shirt on and your wristband?

2 A. Yes.

3 Q. In public view.

4 And somebody approached you from behind and told
5 you you couldn't have the wristband, right?

6 A. Yeah. He whispered it in my ear.

7 Q. And when you turned around -- and whispered it to
8 you in sort of an unobtrusive way, right?

9 A. Yes.

10 Q. Didn't make a big scene at that point?

11 A. At that point he didn't make a big scene, no.

12 Q. And when you turned around -- you didn't know his
13 last name was Desilets, but you recognized that it was Mike?

14 A. Yes.

15 Q. And you knew at that time that he was the athletic
16 director?

17 A. Yes.

18 Q. And he told you at that time that the wristband
19 violated policy, right?

20 A. Well, I don't know if those were his words, but he
21 said it was a protest and there were no protests allowed.

22 Q. Okay. And at that point at least you understood
23 that the district's position was that this wristband was not
24 going to be permitted at the game, right?

25 A. At that particular point I thought he was joking

1 around with me, but eventually I came to my conclusion that,
2 yeah, he was actually serious.

3 Q. How long passed before you came to that conclusion?

4 A. Probably like 30 seconds or so.

5 Q. Okay. So 30 seconds after Mike Desilets tells you
6 that, you know, protests won't be allowed, you come to the
7 conclusion that the intent is you can't wear that wristband?

8 MR. KOLDE: Objection to just the way that was
9 phrased about whose intent. I'm just concerned it's a vague
10 question, your Honor.

11 Q. The district did not want you to be wearing the
12 wristband. Thirty seconds after Mike talked to you, you came
13 to that conclusion?

14 A. Yeah, yeah. It was pretty clear at that point.

15 Q. And you had an excuse ready, right?

16 A. I'm sorry?

17 Q. You had an excuse ready, correct? You told
18 Lieutenant Lamy that the armband is protesting breast cancer,
19 right?

20 A. I didn't say that initially, no.

21 At first I was stunned, and then I went to
22 basically saying I'm just following the First Amendment here.

23 Q. Did you or did you not at some point tell
24 Lieutenant Lamy that the wristband was an armband protesting
25 breast cancer?

1 A. Yeah.

2 Q. And that wasn't true, right?

3 A. Well, when I went to Amazon to buy the wristband,
4 it basically is for breast cancer awareness.

5 Q. And so is it your position that that was true then,
6 that when you wore the armband you were using it as an
7 intention to, as you said, protest breast cancer?

8 A. Well, I was wearing it to support women and their
9 causes. In this case it was preventing biological boys to
10 play girls' sports.

11 Q. Right. Which doesn't have anything to do with
12 breast cancer, does it, sir?

13 A. Well, it's a women's cause. So, yes, it does.

14 Q. Well, I mean, you know men can get breast cancer
15 too, right?

16 A. Yes.

17 Q. And in any case, you weren't wearing this as part
18 of a breast cancer awareness or breast cancer support
19 wristband that day, right?

20 A. No. I was wearing it to support women's causes.

21 Q. Okay. And then you added for Lieutenant Lamy that
22 it's a breast cancer pink wristband, right?

23 A. I'm sorry?

24 Q. You added for Lieutenant Lamy that it's a breast
25 cancer pink wristband, right?

1 A. I don't understand the question. What are you
2 asking?

3 Q. I'm asking if you told Lieutenant Lamy that it's a
4 breast cancer pink wristband.

5 A. Yes, I did say that. Yes.

6 Q. Okay. And that was not really true either, right?

7 MR. KOLDE: Objection. Asked and answered, your
8 Honor. We've gone over this.

9 THE COURT: Overruled.

10 A. I believe it's true that I was supporting women's
11 causes by wearing a pink wristband, yes.

12 Q. Well, let's go to the parking lot then.

13 You moved the car so you could see the game, right?
14 And then you didn't hold up the sign during the game, correct?

15 A. That is correct.

16 Q. You only pulled out the sign when the game was
17 over, right?

18 A. That is correct.

19 Q. And from my recollection of the video, and I'm sure
20 you can correct me if I'm wrong, when Officer Lamy comes up to
21 you, Lieutenant Lamy comes in your direction, you're holding
22 it and looking in his direction at this point, correct?

23 A. I'm holding it and I'm looking towards him, yes.

24 Q. And behind him is the visitor's bus, right?

25 A. I don't know where the bus was. I didn't see it in

1 the body cam footage.

2 Q. Okay. But you were there live, right? You don't
3 have to just rely on the footage.

4 A. I didn't know where it was, to be honest with you.
5 It was nowhere near me.

6 Q. Didn't notice a big, yellow bus parked just --

7 A. Where was it parked?

8 Q. You didn't notice a big, yellow bus parked about 50
9 yards to your left?

10 A. I don't recall. Where was it?

11 Q. I'm asking if you recall it or not.

12 A. I do not recall that, no.

13 Q. Okay. The officer told you to leave, right?

14 A. He --

15 Q. He told you to leave, right? That's an easy one.

16 A. Yes. That's when he started coming to me and said
17 I had to leave.

18 Q. And you refused?

19 A. Yes, I refused.

20 Q. Multiple times, right?

21 A. Well, I was asked to leave the game, and I left the
22 game.

23 Q. Lieutenant Lamy asked you multiple times to leave
24 the parking lot and the grounds?

25 A. He also said put away your sign or leave.

1 Q. All right, sir, just --

2 THE COURT: You really have to answer. It's not a
3 conversation. You really have to answer the questions.

4 If your lawyer doesn't like them, he can follow up
5 later.

6 THE WITNESS: Okay.

7 Q. Lieutenant Lamy told you multiple times that you
8 were to leave the grounds; isn't that right?

9 A. Yes. He told me to put away the sign or leave.

10 Q. And you did not leave the grounds, correct?

11 A. I did not. I did put the sign away, though.

12 Q. In fact, at one time you told him that he would
13 have to arrest you, right?

14 A. I'm sorry. What was that?

15 Q. At one time you told him he would have to arrest
16 you, correct?

17 A. Exactly.

18 Q. You also told him that you were taking the Rashes
19 home. Do you remember that?

20 A. Yes.

21 Q. That wasn't true either, was it?

22 A. That was a misspeak.

23 Q. It was a misspeak? It was a lie, wasn't it?

24 A. It was not a lie.

25 Q. It was to try to explain to Lieutenant Lamy for

1 your advantage that you needed to stay because your
2 80-year-old in-laws were present?

3 A. I believe my exact words were I needed to stay for
4 my children and I needed to care for my in-laws.

5 Q. No. You didn't say care for, right? You said you
6 were going to give them a ride home. Because he said, oh,
7 you're going to put six people in this car? And you looked
8 the officer straight in the eye and said, yes, I am, right,
9 and that wasn't true?

10 A. Yes, I did. I did say that. I misspoke in the
11 heat of the moment.

12 Essentially what I do after every soccer game is I
13 help my in-laws carry their chairs to their car. They suffer
14 from health issues, and I would rather not have them carrying
15 stuff. So I wanted to be there to help them.

16 Q. That's not what you told Lieutenant Lamy, right? I
17 mean, it's nice now, but that's not what you told him, right?

18 A. In the heat of the moment I didn't say that, no.

19 Q. No. What you said was you were giving them a ride
20 home, right?

21 A. That is correct.

22 Q. And he challenged that because he knew that wasn't
23 true, right?

24 A. No, he didn't really challenge that.

25 Q. He said you're fitting six people into this car?

1 A. No. I think he said something about why don't your
2 kids just walk home.

3 Q. That's one of the things he said, and he also said,
4 you're fitting six people into the car, and you said yep?

5 A. Yes.

6 Q. Okay. And that was not true. That wasn't a
7 misspeak, right? That was just not true?

8 A. That's correct.

9 Q. Okay. It's another lie to the police officer?

10 A. What's that?

11 Q. That was another lie to the police officer, right?

12 A. What was the first lie?

13 Q. The cancer story you tried to tell him, right?

14 Tell me this. Lieutenant Lamy also said you could
15 protest, if you wanted, out on White Rock Hill Road, correct?

16 A. I believe so, yeah.

17 Q. You know that's the road that runs by the school?

18 A. That's correct.

19 Q. And you could also of course -- he didn't say this,
20 but you could go to board meetings and protest there if you
21 wanted to, sort of raise your concerns to the board, get on
22 the agenda, all those things?

23 A. Yeah. We've done that.

24 Q. And you could meet with the administrators if you
25 wanted to?

1 A. Yeah. We've done that.

2 Q. Okay. You could certainly send scathing e-mails
3 like you did on August 1st, right?

4 A. Sure.

5 Q. And none of those things are going to get you into
6 any trouble with the board, right?

7 A. Well, I think we were targeted based on the
8 behavior of the school officials based on these e-mails and
9 concerns that we've raised.

10 MR. CULLEN: Could you bring up Exhibit J, please,
11 and if you could just expand the text of this?

12 That's perfect. Thank you. Thanks, Stacy.

13 Q. This is an e-mail from you, right, Mr. Fellers?

14 A. Yes.

15 Q. Again using your kylefellers@yahoo.com account?

16 A. That's correct.

17 Q. And you sent it to Marcy Kelley who you knew to be
18 the superintendent?

19 A. Yes.

20 Q. And you complain about one of the officials calling
21 you an F-ing A-hole, correct?

22 A. That's correct.

23 Q. And then at the end you write, "Under article
24 f(2) (b) of the NHIAA handbook, this is grounds for suspension
25 if not outright firing."

1 A. That's correct.

2 Q. Do you feel that Mr. Rossetti should have been
3 suspended or fired based on the language that he used against
4 you after the game?

5 A. Against me as well as around other parents and
6 children, yes. I believe it was very inappropriate.

7 Q. With respect to upcoming events, what's your --
8 what signs do you intend to bring to the parking lots of say
9 -- you're going to attend a basketball game, correct, in the
10 future? I think you said you were going to go to the Bishop
11 Brady game that's coming up.

12 A. I would like to, but I haven't been given that
13 permission.

14 Q. Okay. And if you went to that and the Court were
15 to permit you, you're also asking the Court to allow you to
16 have signs in that area, right?

17 A. No. I was just looking to wear a pink wristband.
18 I mean, I do reserve the right, if I want, to put a sign in my
19 car.

20 Q. Okay. And that sign should just be able to say
21 whatever you want it to say?

22 A. Well, I would use the same sign that I used in the
23 soccer game, protect women's sports for female athletes.

24 Q. Just that sign?

25 A. Yeah.

1 Q. And what about holding it up outside of the car?
2 Are you looking to be able to walk around with it and march it
3 around?

4 A. Well, I've never done that in the past. Why would
5 I do it now?

6 Q. I don't know, but I'm asking you now on the stand
7 if that's something you're asking to be able to do.

8 A. I have no intention of doing that.

9 Q. Do you think that there should be any limit on how
10 many people can walk around the parking lot with signs?

11 A. If they're not bothering anybody. I mean, walking
12 around -- you're trying to infer that I walked around with
13 signs. I did not do that.

14 Q. I understand. I'm just trying to understand the
15 scope of what you're asking this Court to allow you to do in
16 the future.

17 A. I've said it. I would like to walk around with a
18 pink wristband with two Xs on it.

19 MR. CULLEN: If I could have a moment, your Honor?

20 THE COURT: Of course.

21 (Pause)

22 MR. CULLEN: Thanks, your Honor. I don't have
23 anything else for Mr. Fellers right now.

24 THE COURT: All right. Any redirect?

25 I'm sorry.

1 MR. DUCHARME: I have some questions, your Honor.
2 I don't know if you want Mr. Kolde to go and then have me go
3 last or have me jump in now.

4 THE COURT: You know, why don't we go by aligned
5 parties here.

6 MR. DUCHARME: Thank you.

7 THE COURT: So why don't you go, Mr. Ducharme.
8 Appreciate it.

9 CROSS-EXAMINATION

10 BY MR. DUCHARME:

11 Q. Mr. Fellers, my name is Dennis Ducharme. I
12 represent Mr. Rossetti.

13 This exhibit that is up, you said --

14 THE COURT: I should probably -- I don't know. I
15 don't think this is momentous, but I should mention, I think,
16 Mr. Ducharme and I belong to the same golf club, Concord
17 Country Club, and occasionally we do play against each other
18 in matches.

19 MR. KOLDE: Do you let him win?

20 THE COURT: He's not that good.

21 MR. DUCHARME: I never let him win for much money.

22 MR. KOLDE: That's fine, your Honor.

23 Q. Mr. Fellers, you were clearly upset with the
24 exchange with Mr. Rossetti in the parking lot, correct?

25 A. Yeah. I mean, I was verbally assaulted.

1 Q. Any different from you calling people Nazis on the
2 sideline? Pretty equal?

3 A. No. Not even in the ballpark.

4 Q. No? Okay. So you draw a different line?

5 A. I totally draw a different line. Especially when
6 you're in front of other children screaming you're a fucking
7 asshole.

8 Q. Now, you're not suggesting that Mr. Rossetti
9 approached you out of the blue in the parking lot, right?
10 There was an exchange before those words came out, wasn't
11 there?

12 A. No. I was holding up my sign quietly.

13 Q. Okay. Now, you wrote an e-mail to the
14 superintendent of schools referring to Mr. Rossetti as one of
15 her officials, right?

16 A. Well, first I sent an e-mail to NHIAA with the
17 complaint.

18 Q. Okay.

19 A. They responded and said this needs to go to the Bow
20 administration. So I just copied and pasted what I sent to
21 NHIAA and sent it to Marcy, here's my e-mail.

22 Q. You don't really understand the interplay between
23 the NHIAA and its officials and the school districts, do you?

24 A. I do not.

25 Q. You don't know who pays who?

1 A. No.

2 Q. You don't know who charges who what, correct?

3 A. I have no idea.

4 Q. You do know that Mr. Rossetti is not an employee of
5 the Bow School District?

6 A. I figure he's like a contractor.

7 Q. And you know he's not a member of the Bow school
8 board, correct?

9 A. Yes.

10 Q. You know he doesn't make policy for the Bow School
11 District, correct?

12 A. Yes.

13 Q. And as far as what happened that day, if I
14 understand correctly, you and Mr. Foote were both wearing the
15 wristbands at one point in time?

16 A. At one point, yeah.

17 Q. Mr. Foote had actually taken his off before the
18 time that the body cam video we saw picks up, right?

19 A. I wasn't aware of it at the time.

20 Q. You know that now, though?

21 A. I know it now.

22 Q. Okay. And have you heard some heated words between
23 Mr. Foote and school officials?

24 A. Remembering it, it was to the left of me, and I saw
25 Mike come from that side and go behind me. There was

1 something going on, but I didn't -- I was too far away to know
2 if it was heated or not.

3 Q. You were aware of some sort of commotion before he
4 got to you?

5 A. It wasn't loud enough for me to think it was a
6 commotion. It could have been -- in my mind it could have
7 been just a discussion or a conversation.

8 Q. There definitely was a commotion between you and
9 Mr. Desilets and Officer Lamy though?

10 A. There was a pretty -- yeah, a discussion.

11 Q. Heated words? I think you --

12 A. Eventually, yeah.

13 Q. Okay. I think you used those words in the
14 declaration you filed in support of the injunction. That
15 things were heated and there was a commotion.

16 A. Yeah. I guess that's accurate.

17 Q. Okay. And all of that happened before Mr. Rossetti
18 stopped the game, correct?

19 A. Yeah. I would say so.

20 Q. Do you know anything about how referees are trained
21 to deal with sideline commotions or disturbances?

22 A. I am not familiar with how sideline commotions are
23 handled by referees.

24 Q. What they're supposed to do or not do?

25 A. No. I have no understanding.

1 Q. Now, in this particular case, and we saw the video
2 this morning, it is Mr. Rossetti who stopped the game,
3 correct?

4 A. Yes. He stopped the game, and I think he stated
5 that there was a First Amendment discussion that caused him to
6 stop the game.

7 Q. And he said that fairly deep into the video after a
8 couple of conversations with folks from the school, correct?
9 The Judge has seen it, Mr. Fellers, so if you don't remember
10 it that way, that's fine.

11 A. Yeah. I clearly remember it wasn't about a pink
12 wristband. It was a First Amendment discussion.

13 Q. Yeah. And you don't know what he had been told in
14 those conversations out on the field?

15 A. That's correct.

16 Q. Okay. The initial complaint in this case was filed
17 before you had seen the body cam video, right?

18 A. You mean this complaint?

19 Q. The complaint to bring the lawsuit, filed before
20 you saw the body cam video?

21 A. I believe so. I'm not a hundred percent.

22 Q. I think the Judge can take notice of that.

23 THE COURT: It was.

24 A. It was. Okay.

25 Q. You then saw the body cam video?

1 A. Yes.

2 Q. Your lawyers filed a substantially longer amended
3 complaint, didn't they?

4 A. Well, I also saw a Trace video as well. I don't
5 know if you're familiar with that, but Trace is a --

6 MR. KOLDE: Kyle, answer the question.

7 THE COURT: Thank you.

8 A. Can you repeat the question for me?

9 Q. Sure. After seeing the body cam video --

10 A. Yes.

11 Q. -- your lawyers on your behalf filed an amended
12 complaint, correct?

13 A. Yes.

14 Q. Both the original complaint and the amended
15 complaint say that Steve Rossetti threatened to forfeit, don't
16 they?

17 A. I believe so, yes.

18 Q. You've seen the body cam video, you've seen it
19 today?

20 A. Yes.

21 Q. Can you pull it up -- have your lawyers pull it up
22 and show me the place where Steve Rossetti uses the word
23 forfeit?

24 MR. KOLDE: Your Honor, does the Court want us to
25 show Steve Rossetti's --

1 THE COURT: It's a personal knowledge question. He
2 either knows or doesn't know.

3 MR. KOLDE: It sounds like he was asking me to run
4 the video. We're happy to do it.

5 MR. DUCHARME: That's all right. I'm sorry. It
6 was a little hyperbolic.

7 Q. He never uses the word forfeit, does he?

8 A. I was in the parking lot at that point. So the
9 only knowledge I know is what I see in the body cam footage.

10 Q. Okay. To your memory, does he ever use the word
11 forfeit in the body cam video?

12 A. I don't recall.

13 Q. Does that mean he didn't or you don't recall one
14 way or the other?

15 A. I don't recall. I don't recall.

16 Q. One way or the other?

17 A. What's that?

18 Q. I don't recall is a funny figure of speech. It can
19 mean I don't think it happened or I don't know one way or the
20 other. Which is it you're saying?

21 A. I guess I don't recall. I don't know what more to
22 say. I don't recall. Let's watch the video footage again, I
23 guess, because that's what you're asking me, right, what was
24 on the video footage?

25 Q. And if you don't remember that --

1 A. I don't remember.

2 Q. Okay. Do you remember in the video somebody saying
3 to Mr. Rash, if you take the wristband off, we can play 23
4 more minutes of soccer?

5 A. I do remember that from the video.

6 Q. And in the video, sometime in that time frame, Mr.
7 Rossetti says, look, take it off, be a nice guy, game's over
8 if you don't, something to that effect? Do you remember that
9 from this morning?

10 A. Yeah. I mean, I guess so then, yes, he's saying
11 game over, meaning forfeit the game, but --

12 Q. Well, you don't know that, do you?

13 A. Well, you just said it's game over. So I guess
14 that means forfeit the game.

15 Q. That's what you guess, correct?

16 A. Yes.

17 Q. Do you know by rule what happens if a game is
18 called with 23 minutes left in the second half and the home
19 team is up? Do you know who wins the game?

20 A. Well, again, if I think back on the body cam
21 footage, I believe someone -- some individual said that the
22 girls would forfeit their playoff spot.

23 Q. And that individual was not Steve Rossetti, was it?

24 A. I don't think it was, no.

25 Q. Okay. Thank you.

1 MR. DUCHARME: Those are all my questions, your
2 Honor.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you, Mr. Ducharme.

5 Any redirect, Mr. Kolde?

6 MR. KOLDE: Just a couple of very brief questions,
7 and I think we can move on to the next witness.

8 REDIRECT EXAMINATION

9 BY MR. KOLDE:

10 Q. During the examination by Mr. --

11 No, it wasn't actually you. It was Mr. Cullen. I
12 was going to call you the wrong name.

13 You gave an answer which I think was a double
14 negative. Mr. Cullen had asked you, Mr. Fellers, whether you
15 thought it was appropriate -- whether it was appropriate to --
16 it was not appropriate to heckle a player on the field, and
17 you said absolutely not, and I just want to make clear that --
18 is your answer that it is not appropriate to heckle a player
19 on the field?

20 A. That is correct. It's not.

21 Q. Okay. All right.

22 MR. KOLDE: That's all I have for this witness,
23 your Honor.

24 THE COURT: All right.

25 Thank you, Mr. Fellers. You may step down. You're

1 excused as a witness.

2 And you may call your next witness.

3 MR. KOLDE: Plaintiffs call Andy Foote.

4 ANTHONY FOOTE

5 having been duly sworn, testified as follows:

6 THE CLERK: Please state your full name for the
7 record.

8 THE WITNESS: Anthony C. Foote.

9 This is a different perspective.

10 THE COURT: It is.

11 DIRECT EXAMINATION

12 BY MR. KOLDE:

13 Q. Mr. Foote, you live in Bow, New Hampshire?

14 A. Yes, sir, I do.

15 Q. All right. And do you have kids?

16 A. I do. Two.

17 Q. All right. And do they go to the Bow public
18 schools?

19 A. Yes, they do.

20 Q. And what are their ages?

21 A. 12 and 17.

22 Q. Okay. And do they participate in any sports or
23 other extracurricular activities?

24 A. Three seasons, yes.

25 Q. Kind of give us an overview of what sports or

1 activities that your kids participate in if they are part of
2 the Bow public schools.

3 A. Yes. Abby has played -- she's currently playing
4 soccer, skiing this season, and lacrosse in the spring. She
5 did previously play basketball but changed sports.

6 And Molly is doing the same sports right now at the
7 middle school. Except for the skiing. Sorry. Molly is doing
8 soccer, basketball, and lacrosse still.

9 Q. Do you still go to some basketball games even
10 though your daughter is no longer playing on the Bow varsity
11 girls' basketball team?

12 A. Yes. The girls -- Abby plays with the seniors that
13 are on the team. We go to support the team and watch the home
14 games.

15 Q. Did you watch some games last season?

16 A. Yes, we did.

17 Q. And is it your intent to watch some home games at
18 Bow this season?

19 A. It is.

20 Q. All right. You heard Kyle Fellers testify earlier
21 about some of the home games coming up in December, the
22 December 13th home game against Bishop Brady and the December
23 17th home game against Souhegan. Are those among the games
24 that you have plans to go to?

25 A. They are.

1 Q. And if you were allowed to by the Court, would you
2 want to wear the pink XX wristband that has been at issue in
3 this case to that game to silently protest on the sidelines?

4 A. I would.

5 Q. Okay. And if you have an opportunity -- if you had
6 the opportunity to, through protection from the Court, would
7 you want to be able to display the Riley Gaines protect
8 women's sports poster that you had on your car at the
9 September 17th soccer game in the parking lot?

10 A. I would like to still have that freedom, yes.

11 Q. Okay. And currently, given what's happened in this
12 case and the no trespass order that we already kind of know
13 about and we've heard a little bit more about it today, are
14 you refraining from doing either of those things, wearing the
15 pink XX wristband silently on the sidelines of a future event
16 or displaying the Riley Gaines poster on your car in the
17 parking lot, because you're afraid you might get sanctioned or
18 have another no trespass order issued by the Bow School
19 District?

20 A. Yes. I have refrained from those activities.

21 Q. Okay. And I don't want to necessarily go through,
22 like, every single event that's coming up, but with the ski
23 team -- Bow doesn't have its own ski slope, right?

24 A. Correct.

25 Q. But it shares facilities with other schools?

1 A. (Nods affirmatively).

2 Q. Is that a yes? You have to answer audibly.

3 A. I don't know if they share it with schools, but
4 they share ski areas with schools, so yes.

5 Q. And there are ski meets, essentially competitions?

6 A. Right.

7 Q. And my understanding is there is one on -- I can't
8 tell actually by your handwriting whether it's December 19th
9 or December 11th at Bretton Woods?

10 A. Yes. There's one coming up over the Christmas
11 break I think. Abby mentioned it last night.

12 Q. All right. And there are a couple of events in
13 early January at Crotched Mountain?

14 A. Correct.

15 Q. And it would be your intent to go to those events?

16 A. Absolutely.

17 Q. And to wear the pink wristband if you were able to?

18 A. Yes.

19 Q. Okay. There's going to be a little bit of overlap
20 in your testimony, but for the most part we're going to cover
21 stuff that maybe Kyle Fellers wasn't able to see as much as
22 you were able to.

23 It's true that Kyle is the one who bought the
24 wristbands that are at the center of this case; isn't that
25 correct, Mr. Foote?

1 A. That is correct.

2 Q. All right. At some point he gave them to you; is
3 that correct?

4 A. That is correct.

5 Q. And who made the decision to put the XX on these
6 wristbands?

7 A. I decorated the wristbands.

8 Q. Okay. When you say decorated, you don't have to go
9 into a ton of detail, but what did you do to decorate them?

10 A. There's history in my family with breast cancer, so
11 I felt it was appropriate to make this a women's sports issue
12 and focus on women. So I decorated it with XX for the female
13 chromosome, the Greek symbol for female, and a friend from a
14 club team had suggested another, the NAD, for not a dude.

15 Q. Not a dude is what NAD stands for?

16 A. Correct.

17 Q. Okay. It was not a reference to gonad or anything
18 like that?

19 A. No.

20 Q. Okay. And just to be clear on the record, at the
21 September 17th game that we've been talking about did you end
22 up wearing an NAD wristband?

23 A. No, I did not.

24 Q. Did anyone else, to your knowledge, end up wearing
25 or displaying an NAD wristband during the game?

1 A. I do not know of anybody displaying one.

2 Q. Okay. And what about the Greek symbol for female,
3 the kind of mirror image, did you wear that wristband?

4 A. No, I did not.

5 Q. And do you know of anybody else at the game wearing
6 that wristband?

7 A. I did not see one.

8 Q. Okay. So you wore an XX wristband?

9 A. I did.

10 Q. And that's the same wristband that you gave to Kyle
11 Fellers; is that correct?

12 A. It is, correct.

13 Q. Okay. And when you decorated the wristbands, what
14 did you use, electrical tape, something else? How did you
15 decorate them?

16 A. A fat Sharpie marker.

17 Q. Okay. And we heard some questioning by Mr. Cullen
18 about, like, the original embroidered breast cancer awareness
19 ribbon. What about all of that -- let's get that out of the
20 way so we don't have to spend a lot of time talking about it.
21 Did you cover them up? Were they still visible on the
22 wristbands?

23 A. One side had the breast cancer awareness ribbon and
24 the other side had the XX on them.

25 Q. Okay. So they weren't turned inside out, correct?

1 A. No.

2 Q. So if somebody was wearing one of the XX
3 wristbands, part of that wristband would show XX and the other
4 side of the wristband that would be visible either inside or
5 outside of the wrist, depending on how you're wearing it,
6 would show the breast cancer awareness ribbon; is that
7 correct?

8 A. Yes. Absolutely. I support both of those causes.

9 Q. And in fact the wristbands displayed a breast
10 cancer awareness ribbon and XX, correct?

11 A. Correct.

12 Q. All right. So Mr. Fellers was being accurate when
13 he was saying it was a breast cancer awareness ribbon in part?

14 A. In part, yes.

15 Q. Who's Shannon Farr married to?

16 A. David Farr.

17 Q. All right. And we don't need to hear a lot about
18 David Farr, but do you disagree with David Farr about politics
19 sometimes?

20 A. We are on different sides of the table, yes.

21 Q. Okay. How do you know -- again, without going into
22 a lot of detail, how do you know that you disagree with David
23 Farr about politics?

24 A. We've interacted on social media and events. He's
25 been around town. His daughter plays on the team with us, and

1 we've interacted over other town issues. Let's just say we
2 got to know each other, and we both are different in our
3 opinions.

4 Q. Okay. And when you say social media, do you mean
5 Facebook?

6 A. Yes.

7 Q. All right. Is it fair to say that David Farr is a
8 progressive?

9 A. Absolutely.

10 Q. All right. And would it be fair to say that you
11 consider yourself more a right of center conservative
12 politically?

13 A. Conservative, traditional values, yes.

14 Q. Okay. Who's Shannon Farr?

15 A. His wife.

16 Q. Do you have any reason to believe that she's
17 politically aligned with him or not?

18 A. From her e-mail, I would say yes.

19 Q. Okay. When you're referring to the e-mail, you're
20 referring to Plaintiffs' Exhibit F?

21 A. Correct.

22 Q. It's the e-mail we got as part of this lawsuit?

23 A. Correct.

24 Q. I'm sorry. Defendants' Exhibit F.

25 MR. KOLDE: Why don't we go ahead and call that up,

1 and go to the third paragraph.

2 Q. This e-mail is dated September 11th; is that
3 correct, Mr. Foote?

4 A. That is correct.

5 Q. So it's about six days before the fateful Plymouth
6 game; is that right?

7 A. Six days before the 17th game?

8 Q. Yes.

9 A. Yes. Correct.

10 Q. And you can see Ms. Farr discussing an alleged
11 conversation that she overheard at the Laconia game; is that
12 correct?

13 A. That is correct.

14 Q. All right. And were you at that Laconia game?

15 A. I was.

16 Q. All right. Did you discuss with any of the parents
17 wearing a dress to the upcoming Plymouth game?

18 A. I did not discuss wearing a dress.

19 Q. Did you discuss with any of the parents buying
20 so-called anti-trans warm-up shirts, if you know what that
21 means?

22 A. I did not discuss bringing anti-trans warm-up
23 shirts.

24 Q. It is true that the Bow girls' varsity soccer team
25 has hot pink warm-up shirts, correct?

1 A. That's true.

2 Q. And how long have they had the hot pink warm-up
3 shirts to the best of your knowledge?

4 A. I'm assuming this season. I don't know exactly,
5 but I'm assuming for this season.

6 Q. Okay. So that predates the September 17th Plymouth
7 game?

8 A. Oh, yes.

9 Q. Okay. And have you seen the girls wear the hot
10 pink warm-up shirts before some of the soccer games in this
11 most recent season?

12 A. I have.

13 Q. And you saw them wear them before the September
14 17th game with Plymouth?

15 A. I don't know if I remember seeing them before, I
16 don't think I focused on it then, but I do remember seeing it
17 after the game. They had them on.

18 Q. Okay. So you know for sure you saw them after the
19 game; is that correct?

20 A. Yes. Correct.

21 Q. And at the first game after the 17th did all the
22 girls wear them before the game as far as you could tell?

23 A. As far as I could tell, it was the majority of the
24 shirts. I think that -- depending on -- they looked more pink
25 than they did blue or anything else.

1 Q. Okay. And that was the first game you were allowed
2 to go to after the order expired?

3 A. Correct.

4 Q. To your knowledge, after the September 17th game
5 did some of the girls on the soccer team eventually stop
6 wearing the pink warm-up shirts?

7 A. Yes.

8 Q. Okay. And what is your understanding of why that
9 occurred?

10 MR. CULLEN: Objection, your Honor.

11 THE COURT: Overruled.

12 If you know.

13 A. My understanding was some thought it was
14 inappropriate given the Parker Tirrell situation. There was a
15 division that way.

16 Q. Okay. So from what you were able to observe from
17 the sidelines, since September 17th have some of the girls on
18 the Bow soccer team continued to wear the hot pink warm-up
19 shirts and some have not worn them?

20 A. Yeah. For example, my daughter wore them
21 because --

22 Q. Just answer the question. Listen to the question
23 and answer the question.

24 I asked you do some wear them and some not wear
25 them?

1 A. Yes. Some did and some didn't.

2 Q. Okay. To your knowledge, has the school district
3 done anything to prevent any of the students on the Bow soccer
4 team from expressing their sociopolitical beliefs by either
5 wearing or not wearing the hot pink warm-up shirts after the
6 September 17th game?

7 MR. CULLEN: Objection, your Honor.

8 THE COURT: Right. I think you need to lay a
9 better foundation than that.

10 What suggests that their wearing a warm-up shirt
11 was a sociopolitical issue for girls on the soccer team?

12 Q. How do you know that some of the girls thought it
13 was a political statement to wear the hot pink warm-up shirts?

14 MR. CULLEN: Again, objection, your Honor. It's
15 going to be hearsay for sure.

16 A. Well, I know that some of the families who --

17 MR. KOLDE: Wait. Just wait.

18 THE COURT: True, true.

19 Sustained.

20 Q. Do you believe that the hot pink shirts are
21 anti-trans warm-up shirts?

22 A. No.

23 Q. And why do you say that?

24 A. My belief, pink is the color associated with
25 females, and it's a pink shirt that they wear for warm-up.

1 Q. What's a pink out?

2 A. They do those either at championship games or
3 during the month of October for breast cancer support.

4 Q. And when you say they, who's the they that you're
5 talking about?

6 A. Well, I think most teams. I know that the girls
7 did it, but I think the football team also does a pink out, if
8 I'm correct. They all wear pink, and they have parents and
9 fans all wear pink either in support of breast cancer or if
10 it's big games, in the playoffs.

11 Q. Have you ever seen a pink out happen at any Bow
12 School District facilities?

13 A. Yes. At the football games.

14 Q. Have you ever seen Bow Falcon cheerleaders wear
15 pink tops?

16 A. I have.

17 Q. Okay. Do you have any idea what Shannon Farr is
18 talking about here about anti-trans warm-up shirts?

19 A. I don't know what an anti-trans warm-up shirt is.

20 Q. Okay. You did make a sign to express your support
21 for reserving women's sports for biological women for use on
22 your car in the parking lot at the September 17th game; is
23 that correct?

24 A. That's correct.

25 Q. All right. And I don't think we actually have a

1 copy of it in the record. We didn't have a very good picture
2 of it. So can you tell the Court what was on the sign?

3 A. It was Riley Gaines. It was a picture of Riley
4 Gaines, and it says save women's sports, and it was an event
5 she was hosting for women's sports. I made a sign out of
6 that. I found it on the web.

7 Q. Cut and pasted it and blew it up into a sign?

8 A. Yes.

9 Q. Who is Riley Gaines in case people here don't know?

10 A. She's an NCAA swimmer that was competing against a
11 biological male and lost -- or tied, I think, in her
12 championship, and they gave the title to the male over her.

13 Q. Was that the Leah Thomas controversy?

14 A. Leah Thomas, yeah. Correct. Sorry.

15 Q. Leah Thomas is the biological male that won?

16 A. Correct. Well --

17 Q. And has Riley Gaines been somebody who's been
18 talking about the issue of biological males competing in
19 women's sports?

20 A. She's an advocate, yes.

21 Q. Okay. Did your poster say anything negative about
22 trans players?

23 A. None of my posters said anything negative about
24 trans players.

25 Q. All right. Did the poster that you displayed say

1 anything about any player on any particular girls' soccer team
2 at all?

3 A. No. None of my posters were referencing soccer,
4 actually.

5 Q. Did it reference Parker Tirrell?

6 A. No.

7 Q. Okay. In this e-mail from Shannon Farr to Mike
8 Desilets she makes a statement, "Generally planning on how
9 they can heckle and intimidate this player."

10 Did you talk to anyone at the Laconia game about
11 planning to heckle and intimidate Parker Tirrell or any other
12 player at the September 17th game?

13 A. Absolutely not.

14 Q. Did you -- after the Laconia game did you form a
15 plan with anyone to attempt to heckle or intimidate Parker
16 Tirrell or any other player on the field at the September 17th
17 game?

18 A. No.

19 Q. Were you aware that Shannon Farr had denounced some
20 parents to Mike Desilets with the school district prior to the
21 September 17th game?

22 A. Reference in the e-mail?

23 Q. Yes.

24 A. I had no idea, no.

25 Q. Okay. When was the first time that you learned

1 about Shannon Farr's e-mail reporting other parents to the
2 school district?

3 A. Disclosure I think is what it's called.

4 Q. Part of this lawsuit?

5 A. Yes. Disclosure in this lawsuit.

6 Q. When we got a copy from the other side?

7 A. Yes.

8 Q. Okay. All right. Let's fast forward to September
9 17th.

10 What was your plan, Andy Foote's plan, on September
11 17th when you showed up for that game?

12 A. The day of the game, get there early. Get a good
13 seat on the sideline.

14 Q. Slow down for our court reporter.

15 A. I had gotten the armbands from Kyle the night
16 before. I had decorated them, it was either the night before
17 or the morning of, and I was going to bring the armbands and
18 my -- I had some posters of issues with women's sports where
19 women had been hurt by biological boys on the team.

20 My plan was to sit on the sidelines silently
21 wearing the pink wristband, just as we did, and to possibly
22 display the signs, but I realized at that point I didn't have
23 a way to put them up so I decided to put it in the window of
24 my Jeep, and that was it. Silently on the sidelines. Not to
25 bring anybody out. Not to heckle anyone. Not to harass

1 anyone. I never did harass anyone. I was there to support
2 Abby, my daughter, a female on a female sports field, a
3 hundred percent.

4 Q. Did you get Mike Desilets's e-mail that came out on
5 September 16th?

6 A. I did.

7 Q. Did you think that you were violating his e-mail by
8 wearing the pink wristband on the sidelines?

9 A. I didn't consider it a protest. So, no. I admit
10 that until we had discussions I had always considered it
11 support for women and women's sports.

12 Q. Okay. Were you expecting to be banned?

13 A. No.

14 Q. Okay. When you first arrived for the game on
15 September 17th, did you notice anything unusual about the
16 amount of people on the sidelines other than parents?

17 A. I did.

18 Q. Describe that for us, please.

19 A. I've been to four years -- or thirteen years of
20 soccer and four years in -- well, eight years of Bow soccer.
21 And, generally speaking, if I show up 45 minutes early, it's
22 the coach and the team warming up on the field, maybe Mike
23 Desilets on the field setting up, but just a small handful of
24 people there.

25 This time I noticed Chris from the lacrosse team

1 was there. Ben Forbes from the baseball team was there.
2 There was Marcy Kelley, Matt Fisk, and Mike obviously, all
3 there on the field together talking at the golf cart.

4 And also behind that was I noticed a Bow police
5 cruiser which in my time not at a soccer game. I can't even
6 remember if we had one at the championship game this year.
7 I've never seen police force on a soccer field ever. So that
8 was unusual to me.

9 Q. So police presence was unusual.

10 Number of school officials was unusual?

11 A. Absolutely.

12 Q. Did the school officials have any method of
13 communicating?

14 A. Oh, yes. They all seemed to have two-way radio
15 communications.

16 Q. What regular people would call walkie-talkies?

17 A. Yeah, walkie-talkies. Icoms I guess we used in the
18 military. Yes, they had a radio.

19 Q. Okay. And did they actually use them?

20 A. They did.

21 Q. Okay. Was that unusual?

22 A. It's a first. I have never seen that at a soccer
23 game in my career at Bow.

24 Q. You say you saw Marcy Kelley at the sidelines?

25 A. Initially, yes.

1 Q. So she was there at the beginning and then not?

2 A. Apparently. By the time the game had started,
3 there were a lot more people, and I didn't see her. She
4 wasn't part of the folks wandering the sideline during the
5 second half. I don't know where she went, but she was there
6 initially at the golf cart with Mike and the crew, and then --
7 I don't know if she was doing field hockey at that time, but I
8 think she was the assistant coach so she might have had to
9 have left for that.

10 Q. Okay. Did she have a walkie-talkie?

11 A. I don't remember that.

12 Q. Okay. Did Mike Desilets have one?

13 A. I believe he must have. I think Mr. Forbes called
14 him on the radio.

15 Q. During the first half did you notice Parker Tirrell
16 on the field?

17 A. I did only because my daughter was defending him.

18 Q. Okay. And did he play?

19 A. He did.

20 Q. Did you say anything to Parker?

21 A. No.

22 Q. Did you hear any of the other parents say anything
23 to Parker specifically?

24 A. Nothing other than discussing is that Parker. I
25 mean, there was some discussion who was this boy, transgender

1 female, who was playing on the team.

2 Q. All right. Well, I want you to listen carefully to
3 my question because my question was whether they said
4 something to the player, not amongst themselves.

5 A. Oh, no. Sorry.

6 Q. So listen carefully to the question.

7 Did they say anything to the player?

8 A. Nobody said anything to Parker.

9 Q. It sounds like you did say there was some
10 discussion amongst the parents on the sideline, is that
11 Parker, something to that effect?

12 A. Correct.

13 Q. Okay. But nothing that was heckling?

14 A. No.

15 Q. Nothing that was singling Parker out for playing on
16 the field or anything like that?

17 A. No, no.

18 Q. Okay. And during the first half you weren't
19 wearing the pink wristband; is that correct?

20 A. That's correct.

21 Q. All right. Tell us what happened at halftime.

22 A. So after the first half we had the break, I got up
23 to walk back to the Jeep to put the Riley Gaines poster in it,
24 and on the way out I saw Kyle walking towards his car, which
25 apparently he was going to get his cell phone. So I gave him

1 a pink wristband on the way out.

2 And when we got back after the half was over, I sat
3 down in my chair and had my pink wristband on.

4 Q. Okay. This is the pink wristband with XX on it?

5 A. Correct.

6 Q. All right. And Kyle had one also?

7 A. Correct.

8 Q. Had you distributed any of the pink wristbands to
9 any of the other adults present there that day?

10 A. There was a handful of folks that grabbed a
11 wristband, yes.

12 Q. And Eldon is a special case, we'll get to Eldon
13 later, but other than you, Kyle, and Eldon, do you know if
14 anyone else was wearing the pink wristband that day?

15 A. I don't have personal knowledge, no.

16 Q. Okay. So the first ten minutes of the second half
17 you're watching the game wearing your pink wristband?

18 A. Uh-huh.

19 Q. Are you seated or standing?

20 A. I'm seated.

21 Q. In a camp chair?

22 A. Yeah, in a camp chair.

23 Q. On the parent sideline that we saw before?

24 A. At the 50-yard line. Actually, at the 50 yard
25 line. I was right next to it on the sideline.

1 Q. Okay. Who's with you?

2 A. Steve Gallier was on my right. My father-in-law,
3 my wife, my mother-in-law, my wife's aunts.

4 Q. All right. Did you say anything to anyone on the
5 field about your wristband?

6 A. No.

7 Q. Did you --

8 A. On the field of play or on the field?

9 Q. On the field of play.

10 A. No. Definitely not, no. I mean, actually I didn't
11 say anything to anybody about the wristband.

12 Q. Okay. You're just quietly wearing your wristband?

13 A. Absolutely. Yes.

14 Q. All right. Were you ever approached by a school
15 official during the second half about your wristband?

16 A. Yes.

17 Q. Approximately when did that happen?

18 A. I know Kyle had said ten minutes. It was somewhere
19 around that time frame. It wasn't far into the beginning of
20 the second half when Mike Desilets came up and said you're
21 going to have to remove the wristband.

22 Q. Did he face you? Did he come up behind you? How
23 did that happen?

24 A. He came up on my left quietly and said something,
25 you need to remove the wristband.

1 Q. What did you say to him?

2 A. I think my first word was really, and he said -- I
3 think his response was, yes, you need to remove it. I go, a
4 pink wristband, Mike? He says, yes, I know what you're doing.
5 It's a pink wristband. He says, you're going to have to take
6 it off or you have to leave the game.

7 Q. What were you doing?

8 A. Sitting in my chair watching the game.

9 Q. Were you surprised?

10 A. Yes, in a way, but no. I mean, I guess no.

11 Q. Did you express some frustration to Mike Desilets?

12 A. In a sense of, yes, I was being quiet and peaceful
13 on the sidelines and not making any scene and basically nobody
14 knew what we were doing, I was surprised, and I did express
15 some concern to Mike Desilets about it.

16 Q. Did you end up removing the wristband?

17 A. I did.

18 Q. Okay. What did you do with it?

19 A. I threw it on the ground in front of him.

20 Q. Did Mike Desilets do anything to remove the
21 dangerous, harassing, pink wristband from the ground when you
22 threw it on the ground?

23 A. No. He left it there and walked away.

24 Q. Was it still visible?

25 A. Oh, yes. Right in front of me.

1 Q. What did you do with the wristband?

2 A. I picked it up and put it on my vuvuzela.

3 Q. All right. For people who don't know soccer lore,
4 a vuvuzela is a trumpet-like instrument that is from South
5 Africa that is used at soccer matches to celebrate one or the
6 other side; is that correct?

7 A. Right.

8 Q. Some people think they're actually kind of
9 obnoxious, right?

10 A. Yes. Very.

11 Q. But for you that's a good thing, right?

12 A. For me personally. I love it.

13 Q. So it's kind of like a trumpet or a bugle?

14 A. It's a small horn device that makes a lot of noise.

15 Q. You bring your vuvuzela to Bow High School girls'
16 games, right?

17 A. Every soccer game.

18 Q. You've done it before?

19 A. For years.

20 Q. And now that you're allowed back or were allowed
21 back for the rest of the season, you brought your vuvuzela
22 also?

23 A. Yes.

24 Q. How often do you trumpet or play your vuvuzela?

25 A. Sometimes not as often as I like, but every time

1 the girls score I will use it. I don't blow it just all the
2 time. Only when they score a goal.

3 Q. All right. Have you ever been stopped by school
4 officials from blowing the vuvuzela to celebrate a Bow goal?

5 A. Actually, yes.

6 Q. Oh, my goodness.

7 A. Yes.

8 Q. That's another lawsuit. No.

9 A. There was a game -- the game we played against
10 Weare this year, it was part of the initial starting up
11 announcement.

12 Q. For the most part, are you able to play it?

13 A. I have been, yeah. It has never been an issue.

14 Q. And the referees don't have an issue with it?

15 A. Not at the high school. No, they haven't.

16 Q. All right. So this supposedly trans-exclusionary,
17 harassing wristband that was pink with the XX, you did what
18 with it? After you were forced to remove it and picked it off
19 the ground, what did you do with it?

20 A. So a vuvuzela is just a long, skinny horn, and you
21 could slide it easily over the mouthpiece end. I slid it over
22 down towards the larger bell and left it on the vuvuzela.

23 Q. All right. For the remainder of the second half
24 was the supposedly harassing, trans-exclusionary pink XX
25 wristband visible on your vuvuzela on the sidelines?

1 A. Yes.

2 Q. Do you recall whether you played your vuvuzela at
3 all?

4 A. I think they scored a couple goals in the half,
5 second half, so yes.

6 Q. Okay. And did any official ask you to remove the
7 wristbands?

8 A. No.

9 Q. Would you have preferred to have worn the wristband
10 on your wrists?

11 A. Yes.

12 Q. Was that your intention?

13 A. My intention was to wear it on my wrist, yes.

14 Q. Okay. To your recollection did the trans
15 identifying player for Plymouth, Parker, did he play in the
16 second half?

17 A. As far as I remember, Parker played most of the
18 game.

19 Q. Okay. Do you have any recollection that Parker
20 left the game or left the game early or didn't play or
21 anything like that?

22 A. Not that I could tell.

23 Q. All right. Did you use the vuvuzela with the
24 wristband in any way to try to gesture at Parker or
25 communicate with Parker during the second half?

1 A. No. Not at all.

2 Q. Did Steve Rossetti walk over to you and ask you to
3 remove the wristband from the vuvuzela?

4 A. No.

5 Q. Okay. Did you see some of the interaction between
6 the school officials and Kyle Fellers that resulted in Kyle
7 being sent off by Desilets and Lamy?

8 A. Yes, I did. I saw it. I think it was about the
9 time Kyle said something about the First Amendment. I
10 overheard that off to my right.

11 Q. Okay. At that time were you aware that Kyle had
12 removed the wristband and that Eldon Rash had taken the
13 wristband and put it on?

14 A. When I initially saw it, I thought Kyle still had
15 the wristband on. I didn't know anything had happened. I
16 didn't realize until seeing the body cam footage that there
17 was much more that I had missed, actually.

18 Q. Okay. Give us a best estimate for how far you were
19 away from where the interactions were happening between the
20 school officials and Kyle when, you know, when this was going
21 on.

22 A. 25 or 30 feet, I guess.

23 Q. On the body cam footage in the background do you
24 hear somebody saying it's supporting women's sports? Do you
25 know who was saying that?

1 A. Well, I said it once.

2 Q. Okay.

3 A. It's just a pink wristband. And I think my
4 father-in-law said something else, too, but there was a few
5 people talking.

6 Q. Okay. Why were you saying that?

7 A. Because it was a pink wristband supporting women's
8 sports.

9 Q. Okay. Were you able to overhear Steve Rossetti
10 when he came to the sidelines -- stopped the game and game to
11 the sidelines?

12 A. I was. I was filming it.

13 Q. Okay. You have your own homemade video, and that's
14 in evidence; is that correct?

15 A. It is.

16 Q. All right. It shows the events from your
17 perspective 30 feet away, correct?

18 A. Correct.

19 Q. All right. So it captures some of the detail but
20 not as close-up as the body cam footage; is that correct?

21 A. Correct.

22 Q. All right. And we're not going to watch it here
23 today unless Mr. Cullen wants to run it. In the interests of
24 time, it's in the record, you know, I don't think we need to
25 go through all the details of it, but at the end of that

1 video, your own video, you kind of said, oh, Eldon didn't take
2 it off, at least somebody has got balls around here, or
3 something like that; is that right?

4 A. That's correct.

5 Q. Okay. Later did you find out that you were wrong
6 about that?

7 A. I did.

8 Q. Okay. And that Eldon had taken it off?

9 A. Yes. Correct.

10 Q. All right. We'll leave that for testimony from
11 Eldon later on.

12 Do you recall that when Rossetti -- well, when the
13 game was stopped and Eldon was seated wearing the wristband, a
14 bunch of other parents started yelling, take it off, you're
15 hurting the girls, write a letter to somebody, things like
16 that?

17 A. Yes. I remember two people specifically.

18 Q. Okay. Who were the two people specifically that
19 you remember from your own memory?

20 A. So the lady on the left is Clem Madden's wife,
21 Colleen Madden.

22 Q. Slow down.

23 Colleen Madden?

24 A. Colleen Madden. She was the one closest to the
25 field. I think she is that one that said write a letter. She

1 is the one that said write a letter. I know she is.

2 Q. Was she the one that said take it off and sort of
3 ordering people around?

4 A. The loud, very heated, yes. That was Colleen on
5 the left.

6 And to the right was David Farr, Shannon's husband,
7 who said you're only hurting the girls.

8 Q. So David Farr is the progressive person that you
9 know from the Bow community?

10 A. Correct.

11 Q. And it's his wife that sent the e-mail reporting
12 the other Bow parents to the Bow School District; is that
13 correct?

14 A. That's correct.

15 Q. All right. And he was allowed to say that Eldon
16 should take the wristband off, correct?

17 A. Correct.

18 Q. And did you hear those same voices on the videotape
19 when we were listening to it earlier?

20 A. You can see Colleen on the tape actually, and on my
21 video you can see Dave Farr.

22 Q. Okay. But specifically, you know, there are times
23 when we hear audio in there, Kyle wasn't exactly sure who was
24 who. Did you recognize the voices yourself?

25 A. I did.

1 MR. KOLDE: All right.

2 Your Honor, does the Court want us to go through
3 that and identify specific voices?

4 THE COURT: No.

5 MR. KOLDE: Okay. I'll take my cue from the Court.

6 Q. After Eldon -- you later learned Eldon took off the
7 wristband. Was the game allowed to resume?

8 A. It was. Apparently that was the call from Ben
9 Forbes. He said "it's off" to Mike, and that's when the
10 game -- you could see in the video when the girls started
11 going back on the field.

12 Q. All right. It looks like there were two different
13 conferences between Rossetti and the school officials on the
14 field; is that correct?

15 A. I believe there was two times they went and talked,
16 yes.

17 Q. All right. The first time Desilets goes out to
18 talk to Rossetti; is that right?

19 A. Correct.

20 Q. Does Fisk go out? Do you remember?

21 A. No, I think it was just Mike alone on the first
22 one, and then the second one I remember -- it's in the video,
23 yeah, and you saw it.

24 Q. And then Rossetti comes out and says the wristband
25 is coming off or the game is over?

1 A. Yes. There was a discussion from Mr. Rossetti.

2 Q. Okay. And then Rossetti says, take it off, just
3 take it off, and then he ends up walking off again?

4 A. His assistant coach escorted him away, yes.

5 Q. All right. Assistant referee?

6 A. Referee. I'm sorry. Correct. Sorry.

7 Q. All right. And Eldon is still resisting taking off
8 the wristband, and then the officials go back out on the
9 field, school officials and Rossetti, and I guess one of the
10 assistant referees; is that correct?

11 A. Right.

12 Q. And at that point the game is still suspended.
13 Rossetti is out on the field, Fisk is out on the field, Mike
14 Desilets is out on the field, correct?

15 A. Correct.

16 Q. Do you know what they're talking about?

17 A. I do not.

18 Q. All right. And at that point in the video we see
19 Ben Forbes go over, look at Eldon, and radio to Mike "he took
20 it off." Is that correct?

21 A. That is correct.

22 Q. And does that comport with what you were able to
23 observe albeit from 30 feet away?

24 A. Yes. And it's on my video.

25 Q. All right. After that point was there any

1 disruption in the game?

2 A. After the call from Ben Forbes?

3 Q. Yeah. After Rossetti ended the suspension of the
4 game and allowed the game to proceed with the agreement of the
5 school officials, did --

6 MR. CULLEN: Objection, your Honor.

7 Adding in "with the agreement of the school
8 officials." There's been no testimony about it. I've tried
9 to be pretty liberal with letting the --

10 THE COURT: Sustained. It's not relevant.

11 Q. After the game was allowed to resume, Mr. Foote,
12 did anything else happen that was unusual?

13 A. No. The game played out without interruption. I
14 mean, a standard soccer game with standard soccer issues.

15 Q. All right. Rossetti didn't stop the game for any
16 other reason --

17 A. No.

18 Q. -- having to do with your speech?

19 A. No.

20 Q. And no school official approached you after that
21 about removing the wristband from your vuvuzela?

22 A. No.

23 Q. Okay. What did you observe after the game in the
24 parking lot?

25 A. In the parking lot only, I walked up -- there's a

1 little bit of history because Kyle's daughter came up and
2 broke down what was going on, and I walked up to the parking
3 lot going -- I've known Lieutenant Lamy for a few years for
4 other situations in town, and I went up to say to those guys
5 if there's nothing going on, basically, can you please just
6 let this go for now, as we've seen in the video, just to
7 defuse it. If Kyle wasn't getting arrested or if the game was
8 over, could we stop because it was affecting his family.

9 Q. Did that seem to help?

10 A. Phil seemed to -- yeah, at that point I don't know
11 if he was ready to --

12 Q. Don't speculate. Just talk about what you
13 observed.

14 A. Yeah, when I saw it -- I mean, it seemed like Phil
15 was ready to say, all right, I've got it, we're good, the
16 game's over, I'll go home.

17 Yes, it seemed to help.

18 Q. Okay. You shook his hand at the beginning. Why
19 did you shake his hand?

20 A. Because I know Phil. I've known him for four
21 years.

22 Q. Okay. After the game was over, did you receive any
23 documentation from the Bow School District?

24 A. I did.

25 Q. About when did that happen relative to the game?

1 A. I believe it was Thursday after the game. Thursday
2 evening.

3 Q. What happened?

4 A. The Bow Police Department showed up at my front
5 door.

6 Q. And what did they do?

7 A. They gave me a no trespass order.

8 Q. All right. And we're not going to go through it
9 line by line, but if we could just briefly have you identify
10 the order that's already in evidence, and it is the
11 Plaintiffs' Exhibit No. 7.

12 THE COURT: If you do it briefly. I'm familiar
13 with it.

14 Q. Is this the no trespass order that you got?

15 A. That is.

16 Q. All right. And it kept you from attending some of
17 the soccer games for the upcoming not quite week?

18 A. Correct.

19 Q. How many games did you miss as a result?

20 A. One varsity game, one middle school game, and I
21 wasn't able to go to the homecoming football game.

22 Q. All right. And you would have gone if you had had
23 the opportunity, correct?

24 A. I would have.

25 Q. And would you have worn the pink wristband if you

1 had had the opportunity to?

2 A. If I could have.

3 Q. Yes. And the same thing with regard to the other
4 soccer games in the season that you weren't able to wear the
5 pink wristband, correct?

6 A. Right.

7 Q. You would have if you could have?

8 A. Correct.

9 Q. And you would like to wear the same pink wristband
10 in the upcoming games, Bow basketball, ski team; is that
11 correct?

12 A. Absolutely.

13 MR. KOLDE: Okay. Let me just check to see if I
14 left anything out. I think we're good.

15 (Pause)

16 Nothing further at this time, your Honor.

17 THE COURT: All right. Why don't we take our mid
18 afternoon break now. Ten or fifteen minutes.

19 (RECESS)

20 THE COURT: All right. Mr. Cullen.

21 MR. CULLEN: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. CULLEN:

24 Q. Mr. Foote, you had indicated I think on your direct
25 that you were not -- it's probably better to ask you the

1 questions that are for you than for your wife.

2 A. Probably.

3 Q. You had indicated that your intent at this game was
4 not to target Parker Tirrell, correct?

5 A. Correct.

6 Q. And that your only purpose in going to this game
7 was to express your support for female athletes, right?

8 A. For my daughter. Female athletes, yes.

9 Q. Your daughter and the rest of the Bow team?

10 A. What's that?

11 Q. Your daughter and the rest of the Bow team?

12 A. Yes.

13 Q. Now, you -- is it fair to say that you supported
14 the passage of HB 1205, the bill that would have restricted
15 Parker and others from playing on girls' teams?

16 A. The one that Governor Sununu passed?

17 Q. Correct.

18 THE COURT: The legislature passed.

19 THE WITNESS: The legislation.

20 THE COURT: He signed it.

21 THE WITNESS: Correct. Sorry.

22 Q. And you knew this summer that it was being
23 challenged by Parker Tirrell and another student, right, that
24 HB --

25 A. Summer of -- sorry.

1 Q. I'm sorry. You knew in the summer of 2024, this
2 past summer, that HB 1205 was being challenged by two students
3 in this very court?

4 A. I think I knew about the two instances. My wife
5 attended the court whenever the court hearings were. I think
6 September 11th was one, and there was one prior to that.

7 Q. There was one in August, right?

8 A. I don't know the date, but they were the two --
9 last two hearings, yes, that's when I became aware of it.

10 Q. And after that occurred you sent a note to the
11 girls' varsity soccer coach, correct?

12 A. I did send an e-mail to -- sorry. I don't know if
13 that was in reference to the house bill, I don't think.

14 Q. But just in the summer, August 23rd, in particular,
15 you sent an e-mail to the soccer coach, correct?

16 A. I did.

17 Q. And that was a Mr. Vogt?

18 A. Jay. Head coach.

19 Q. Jay Vogt, head coach.

20 And in that e-mail you went through all the other
21 countries and their positions -- not all the other countries,
22 but a number of other countries and their positions on when
23 male-born athletes could play in women's sports, right? Do
24 you remember that?

25 A. I referenced other countries, how they were dealing

1 with it, yes.

2 Q. And you told Mr. Vogt, "No one other than the
3 United States transgender mob supports boys playing on girls'
4 sports teams," right?

5 A. Is that what the e-mail says?

6 Q. If you don't remember, we can --

7 MR. CULLEN: Can you bring up that e-mail?

8 Q. Just to refresh your recollection, if you turn over
9 to -- first of all, you can look at this for yourself. It's
10 not marked as an exhibit.

11 MR. CULLEN: If you can turn to the second page
12 just so that Mr. Foote can see.

13 Q. After the big, long paragraph, "No one other than
14 the United States transgender mob supports boys playing on
15 girls' sports teams," that's something you said to Mr. Vogt?

16 A. That's in my e-mail, yes.

17 Q. And you told Vogt, though, that this was not a game
18 that we have to deal with tomorrow, correct?

19 A. That was -- I think the -- what's the first part of
20 the e-mail say?

21 Q. Yeah, why don't we go back to the first. Sorry.

22 Okay. So what you wrote to Mr. Vogt was,
23 "Apparently there was a discussion at BWW's tonight that
24 Pinkerton might have a boy on the team."

25 BWW is Buffalo Wild Wings?

1 A. Buffalo Wild Wings, yes.

2 So the girls were at Buffalo Wild Wings, and
3 Abby came home and said that somebody had brought up --

4 Q. Hold on. I don't want to hear the hearsay part of
5 it. I just want to ask the questions.

6 A. Oh. So --

7 THE COURT: Just answer the question.

8 A. Yeah. Sorry. Go ahead. I apologize.

9 Q. I will do my best to actually get the question out.
10 I apologize.

11 A. Yes, sir.

12 Q. You write in the second paragraph to Mr. Vogt,
13 "Apparently the boy was the one from Plymouth, so that's not a
14 game we need to deal with tomorrow."

15 A. Address. Yes.

16 Q. Okay. And you knew already that Plymouth was on
17 the schedule?

18 A. I did.

19 Q. And you knew that it wasn't coming up until
20 sometime in September?

21 A. Correct.

22 Q. Okay. And after you sent this e-mail on the 23rd,
23 the regular season began, right?

24 A. Yes.

25 Q. And the girls' varsity team for Bow played a bunch

1 of games in August and September before the Plymouth game,
2 right?

3 A. They did play some games, yes.

4 Q. Well, they played -- you go to most of the games it
5 sounds like.

6 A. I try to go to all of them.

7 Q. So did you go to the game against Kingswood?

8 A. I think that's the one I missed.

9 Did I go to Kingswood?

10 Q. How about Lebanon?

11 We don't get a lifeline. You can't ask your wife.

12 A. No. I'm thinking. It's not a lifeline. I'm
13 trying to think.

14 Q. Okay.

15 A. I couldn't tell you off the top of my head. I know
16 Keene, Coe-Brown. There were two games. There were some
17 games I had to work that I think conflicted. I couldn't make
18 it.

19 Q. Looking at this schedule, it looks as though you
20 had regular scheduled games against Kingswood, Lebanon, and
21 Keene all prior to the Plymouth game.

22 Did you go to any of those?

23 A. I don't recall. Yeah. Sorry. I can't tell you
24 off the top of my head.

25 Q. The Laconia game wasn't the first game you went to

1 all season, right?

2 A. I think we played Keene -- who did we play before
3 -- does anybody have the schedule?

4 THE COURT: It doesn't matter.

5 THE WITNESS: Okay.

6 Q. You went to at least some other games before
7 Plymouth and Laconia, right?

8 A. Yes.

9 Q. Okay. I mean, your daughter was the captain of the
10 team, right?

11 A. Yes.

12 Q. And you try to go to all the games?

13 A. To the best of my ability, yes.

14 Q. So the odds of you having missed the first three
15 games of the season seems pretty low, right?

16 A. It does.

17 Q. Okay. And you didn't bring any XX wristbands to
18 any of those games, right?

19 A. No.

20 Q. You didn't take any effort to display your support
21 for women's sports at any of those games, right?

22 A. No.

23 Q. And you didn't bring any signs to put on your car
24 at any of those games, correct?

25 A. No.

1 Q. And that's true of the Laconia game, too, right?
2 You didn't bring any wristbands to the Laconia game, right?

3 A. No.

4 Q. You didn't bring any positive pro-women sports
5 messages to the Laconia game, correct?

6 A. Correct.

7 Q. You didn't bring your Riley Gaines poster to the
8 Laconia game?

9 A. Correct.

10 Q. The Plymouth game was the first one where you
11 decide to bring your poster and your wristband to, correct?

12 A. Correct.

13 Q. Okay. Now, on September 10th -- are you aware that
14 that's the date that the Court confirmed its ruling, its prior
15 ruling that Parker Tirrell could play for Plymouth for the
16 duration of the season?

17 A. Yes.

18 Q. Okay. And I think you mentioned in fact that your
19 wife had attended that hearing herself?

20 A. Correct.

21 Q. And you went to the Laconia game. I think you told
22 your attorney that you were not -- you didn't make any of
23 these comments that were mentioned in the Farr e-mail,
24 correct?

25 A. Not the specific comments in that e-mail, no.

1 Q. Okay. What comments did you make?

2 A. I talked about the hearing. We were waiting to let
3 the system work the process.

4 Q. And at that stage the system had worked the
5 process, right?

6 A. Well, we were hoping that the judge's ruling would
7 go in favor of House Bill 1205, but it didn't.

8 Q. All right. And you knew that -- at the time of the
9 Laconia game you already knew that that's the way it had gone,
10 right?

11 A. I think it came -- did it come out that day? I
12 think I found out on the 11th.

13 Q. And with respect to the things that were reported
14 by Ms. Farr, just cutting to the chase, you would agree I
15 think that heckling or intimidating the player from the other
16 side would not be something that would be appropriate.

17 A. Absolutely not.

18 Q. You posted on Facebook on September 13th --

19 MR. CULLEN: Can we bring this up, Stacy,
20 Plaintiffs' Exhibit 5?

21 Q. You posted on September 13th, if I'm reading it
22 correctly at the top, it's a little faint, about the upcoming
23 game, correct?

24 A. Correct.

25 Q. Okay. And one of the things that you wrote was,

1 "Despite Governor Chris Sununu's stance on protecting female
2 athletes, the federal court has failed to enforce this
3 decision, leaving our girls vulnerable," correct?

4 A. That's correct.

5 Q. And you go on to say that it's not the athlete's
6 fault, right?

7 A. Correct.

8 Q. And that you believe the athlete is a victim of
9 child abuse, correct?

10 A. Correct. That's what it says.

11 Q. And then you went on to say, "The failure to uphold
12 the governor's decision by the legal system, the school board
13 and the school administration is setting a dangerous precedent
14 for women's sports," correct?

15 A. Correct.

16 Q. Was it your position at that time that the school
17 board and the school administration should not have followed
18 this court's order and allowed Parker Tirrell to play?

19 A. My consideration on this is that the leadership
20 failed, and that is part of the leadership. From the
21 governor's office to the coach on the field.

22 Q. But was it your position that the school board and
23 the school administration should not have followed this court
24 order and should not have allowed Parker Tirrell to play?

25 A. I honestly didn't consider it at that time.

1 Q. Okay. You got Mike Desilets's e-mail the night
2 before the game, right?

3 A. I did.

4 Q. Okay. At this time had you already made up your
5 armbands?

6 A. I had the armbands, but I hadn't done anything to
7 them.

8 Q. And then -- so after you got this note --

9 MR. CULLEN: And if we could just pull up Exhibit
10 2, please, Plaintiffs' Exhibit 2.

11 Q. Now, you were on the distribution list for this?

12 A. Correct.

13 Q. And you saw Mike writing that he understood there
14 were differing opinions and that that was fine?

15 A. Correct. Yes.

16 Q. Okay. And you also got the message -- you also
17 read the part that said, "Please understand that any
18 inappropriate signs, references, language, or anything else
19 present at the game would not be tolerated," correct?

20 A. I didn't really catch the anything else present,
21 that didn't sink in as part of it, but I did see inappropriate
22 signs and references and language. I did see that.

23 Q. Well, you wrote a fairly lengthy response to this
24 e-mail, didn't you?

25 A. I did.

1 Q. Okay. Are you saying now, though, that you didn't
2 read the e-mail in full?

3 A. I didn't catch the anything else present. It
4 didn't sink in. The more I read that, I can see more maybe,
5 but it's an e-mail. It takes time to digest and interpret it.
6 At that point I didn't even think of anything.

7 Q. Well, you digested and interpreted it by the next
8 morning, right?

9 A. Say that again.

10 Q. You digested it and interpreted it by the next
11 morning, didn't you?

12 A. As in the e-mail that was sent?

13 Q. Yeah. You interpreted and digested this e-mail
14 from Mr. Desilets sent to you -- received by you September
15 16th? By the next morning, the morning of the 17th, you had
16 digested this?

17 A. I don't think these two were -- it was a separate
18 e-mail. I wasn't referencing this alone.

19 Q. Didn't you respond specifically to this e-mail and
20 attach it?

21 A. I may have replied to that e-mail, but it wasn't in
22 response to that e-mail.

23 Q. Okay. Well, you replied to this e-mail because --
24 you already heard Mr. Fellers say that's the only reason he
25 knew about this e-mail, right, because it was attached to

1 yours?

2 A. I cc'd Kyle on it. That doesn't mean I was writing
3 responding to his e-mail. I was writing an e-mail back about
4 the issue I have with the whole situation, not just Mike's
5 e-mail about the game.

6 If you read my e-mail, it doesn't even -- I don't
7 think I reference it.

8 MR. CULLEN: Well, why don't we bring that e-mail
9 up then, Stacy, if you would.

10 If you could just drop it down a little bit so we
11 can see who it goes to at least at the beginning? Thank you.

12 Q. So this is an e-mail from you to Mr. Desilets?

13 A. Correct.

14 Q. Copied to your wife and to Kyle Fellers, among
15 others?

16 A. Yes.

17 Q. The others are other people on the -- other parents
18 on the team, right?

19 A. I assume so, yeah. I don't know exactly.

20 Q. I mean, this is your e-mail?

21 A. It is my e-mail. I just -- I don't remember
22 exactly who it went to. It's probably other parents that
23 share like views.

24 Q. And you understood -- you heard Mr. Fellers testify
25 that this was attached to your -- that Mr. Desilets's e-mail

1 of September 16th was attached to your e-mail, right? That's
2 how he learned about it?

3 A. Right.

4 Q. You do not have any reason to dispute that, right?

5 A. No.

6 Q. And what you say in here is, "Is this all you have
7 to say about this game?" That's your very first line, right?

8 A. Yeah. Correct.

9 Q. Does that help refresh your recollection as to
10 whether you're responding to Mike's e-mail?

11 MR. CULLEN: Can you highlight that, please?

12 A. So, yeah, it's there. I understand it. I saw
13 that. That doesn't mean that I'm just responding to the
14 single e-mail. My wife had two conversations with him. We've
15 had -- I e-mailed Jay Vogt. That was a question. We've
16 talked about this. I've talked to my daughter about it.
17 There's been multiple discussions. This just happens to be
18 the last one that comes out.

19 Q. I just want to make sure I'm clear, because I
20 thought you were saying earlier that you didn't really digest
21 Mike's e-mail and you never even really realized that it said
22 other types of inappropriate behavior would not be allowed.

23 A. It's in there. I see it.

24 Q. Okay. And then you continue, "You've proven
25 yourselves weak, ineffective, and completely out of touch with

1 real leadership," right?

2 A. Correct.

3 Q. Okay. And then you say: This isn't "just another
4 game." Not by a long shot.

5 A. Absolutely.

6 Q. And that's how you felt about the Plymouth game,
7 right?

8 A. Do you understand the context of that?

9 Q. I'm asking -- that's how you felt about the game,
10 didn't you?

11 A. I felt that it was more than just another game,
12 yes.

13 Q. So when you said earlier that your protest wasn't
14 anything to do with protesting transgenders or anything like
15 that, this was the first time that you actually decided you
16 were going to go to a game and bring something, some material
17 to the game, a sign and the wristbands?

18 A. No. That's not what that means.

19 Q. But that's what it says, right, is that: This
20 isn't just another game. Not by a long shot.

21 A. That doesn't have anything to do with wearing
22 wristbands.

23 Q. Okay. And after you -- at this stage you had
24 already prepared the wristbands, right?

25 A. This was sent the morning of -- it was right around

1 the same time. Actually, you know what, I think I wrote this
2 and then did the wristbands, to be honest. I know that the --
3 I know my disposition. I mentioned it. I think the timing
4 was off. I think I did the wristbands after this e-mail,
5 actually.

6 Q. Okay.

7 A. To clarify the record.

8 Q. So after this e-mail and after receiving the
9 message from Mike Desilets, that's when you decided to mark up
10 the bag of wristbands that you had received from Mr. Fellers?

11 A. So in the timeline of events, I wrote the e-mail,
12 Kyle dropped off the wristbands, I think I read his e-mail, I
13 responded to the e-mail, and then I put the Xs on the pink
14 wristbands. Yes, that's the correct order of events.

15 Q. And you continue in the e-mail, "You ignored us,
16 and now you expect us to just go along with this," don't you?

17 A. Does it say that? I think it does. Where are
18 you referencing?

19 Q. The same paragraph.

20 A. Oh. It does say that, yes.

21 Q. And you continue, "I'm a leader, and a real leader
22 doesn't stand by while their players are thrown into harm's
23 way. You don't let biological males who are stronger, faster,
24 and more physically dominant compete against women, and you
25 don't sit around waiting for someone to get hurt before you

1 take action."

2 A. Yes.

3 Q. You can certainly understand how someone receiving
4 this e-mail would consider that you were not going to stand
5 around at the game, correct?

6 MR. KOLDE: Objection. Calls for speculation.

7 THE COURT: Overruled. It's what he sees.

8 A. Ask the question again, please.

9 Q. You can understand how somebody reading this e-mail
10 would get the impression that you were not going to just sit
11 around waiting for somebody to get hurt at the following game,
12 you were going to do something, right?

13 A. I would have thought he would call me and ask
14 what's going on.

15 Q. That wasn't my question.

16 A. Oh. Well, that's what I was -- you asked what I
17 thought.

18 Q. I said you would understand how somebody reading
19 this e-mail could get the impression that you planned to do
20 something at the game.

21 A. I suppose.

22 Q. Just suppose?

23 A. If I was the leader, I would actually seek out more
24 clarification, but I don't know.

25 Q. No. If you were a leader, you wouldn't stand by

1 while their players were thrown into harm's way. That's what
2 you told them.

3 A. I would try to address it with the people that are
4 in charge.

5 Q. And you reference Riley Gaines here, right, in the
6 very next sentence?

7 A. "Look at Riley Gaines," yes.

8 Q. And you knew of Riley Gaines here. You had already
9 posted about her on your Facebook page, right, or on a
10 Facebook page?

11 A. Uh-huh.

12 Q. Was that a Facebook page or was it -- was it yours
13 or was it the Bow Common Sense page?

14 A. I don't know. Can you pull it up again?

15 Q. Sure.

16 MR. CULLEN: Stacy, can you just switch over real
17 quickly to Plaintiffs' 5?

18 Q. Are you able to tell from this if this is posted on
19 your Facebook page or if this is on the Common Sense page?

20 A. It looks like my page, but I don't know. Usually
21 it says on it. So I couldn't tell you.

22 MR. CULLEN: Stacy, if we can go back to Exhibit 2,
23 please? I'm sorry. You were right. Exhibit 18. Thank you.

24 Q. And Riley Gaines, among other things, has been
25 using this XX symbol herself to promote the idea that only

1 biologically females belong in women's sports, right?

2 A. I don't know.

3 Q. You don't know that?

4 A. I didn't know she had XXs, no.

5 Q. You continue on in the second to the last
6 paragraph, "I'm sick of your cowardice and your pandering.
7 You would rather be woke than do what's right. Where's your
8 courage? Where's your integrity. Stand up for women, for
9 real women, or get out of the way."

10 Do you see that?

11 A. A hundred percent.

12 Q. And that's what you sent on the morning of the
13 game?

14 A. September 17th at 7:28, yes.

15 Q. And this is the day that you decide you're going to
16 go and bring the wristbands for the first time to the game?

17 A. This is not the first time we talked about
18 wristbands, no.

19 Q. Okay. When else did you talk about wristbands?

20 A. When Kyle bought them. When he delivered them.
21 When I asked Abby to see if the team would wear them.

22 Q. But during this week, the week of the game, right?

23 A. Well, this all happened within the week of the
24 game.

25 Q. Because you were responding to this Court's

1 decision that had confirmed that Parker was going to play in
2 that game, right?

3 A. No. I was responding because of the last court
4 decision that they were going to allow Parker to play, yes.

5 Q. And up until that time you hadn't done anything to
6 support women's sports visually at any game?

7 A. I never had a reason to.

8 Q. Right. Because the only reason you had this day
9 was because you knew Parker Tirrell was going to be on the
10 playing field?

11 A. I knew that my daughter could be potentially hurt
12 someday. My younger daughter could potentially be hurt at
13 some point.

14 Q. But you didn't expect her to be physically hurt in
15 this game, right?

16 A. I don't know.

17 Q. I mean, your wife had attended the hearings.

18 A. I don't know. That's speculation. I couldn't tell
19 you. We had a slide tackle happen, and a girl went out for
20 the rest of the season.

21 Q. That can happen even when you're just playing
22 against another female-born female athlete?

23 A. Oh, yeah. Absolutely.

24 Q. But beyond that, you didn't have any particular
25 reason to be concerned about Parker Tirrell, right?

1 A. In what context?

2 Q. In the context of this game. You already --

3 THE COURT: You knew she was small.

4 MR. CULLEN: Thank you.

5 A. Oh, I don't know. I didn't even -- I really
6 honestly didn't know what size she was. I didn't know what
7 size Parker was.

8 Q. But your wife had gone to the hearing so she knew,
9 right?

10 A. I don't know if my wife saw Parker, what size
11 Parker is.

12 Q. So you go to this game on this particular day and
13 you bring these wristbands with you, correct?

14 A. Correct.

15 Q. You originally asked the players to wear them -- or
16 asked your daughter to ask the players to wear them?

17 A. I asked her to see if the team would wear them,
18 yes.

19 Q. Okay. And then you brought them and you brought
20 them in like a shopping bag or a Market Basket bag or
21 something?

22 A. Yep. Exactly.

23 Q. Okay. And you -- actually, you came to the game at
24 2:30 that day, didn't you?

25 A. It was 45 minutes before it started I think is what

1 I said.

2 Q. It was an hour and a half, though, wasn't it? You
3 were one of the first people at the game?

4 A. I was there early, yes.

5 Q. And you got a prime parking space over on the far
6 right side of the field?

7 A. I was one of the only people there. I think Clem
8 Madden was another one that was there at the same time-ish.

9 Q. And you set up your chairs, right, at the center of
10 the field? Hey, first come, first served. You might as well
11 get the best spot.

12 A. It's the best seat in the house. You might as well
13 get it.

14 Q. I'm not faulting you for that.

15 And you brought your -- you didn't put your Riley
16 Gaines sign on at that time, did you?

17 A. No.

18 Q. You didn't put that on till halftime, right?

19 A. Correct.

20 Q. And you didn't -- you handed out the wristbands to
21 whoever wanted to take them at the beginning of the game,
22 right?

23 A. I handed out a couple, I don't know, six or so. I
24 don't know the exact number.

25 Q. And basically you just kind of showed them the bag

1 and said they could reach in and grab one?

2 A. No. I didn't really have the bag open. It was just
3 sitting next to me. And people came by and if they wanted
4 one, I would give them one. I think the only one I really
5 gave one to was my father-in-law and Kyle.

6 Q. Okay. So you had the bag open and people could
7 just come up. So they knew you had the wristbands then?

8 A. Some people did, yes.

9 Q. Because you had communicated to them at some point
10 that, hey, I'm going to have these wristbands at the game. If
11 you want one, grab one.

12 A. I don't think I ever said that. I think I said --
13 I don't think I ever said I'm going to have wristbands, to
14 pass them out. Maybe I did. If it's in a Facebook post, I
15 guess, but I don't remember saying that.

16 Q. And you didn't put your wristband on at the
17 beginning of the game, right?

18 A. I did not.

19 Q. And that's because you knew that it was going to
20 contravene policy KFA, right?

21 A. I don't know about that. I just didn't want to
22 miss the first half of the game.

23 Q. You didn't want to miss it because you knew that
24 you could miss the game if you wore the wristband, right?

25 A. I had suspected that something would happen, yes.

1 Q. Yeah, you knew this -- in fact, your wife didn't
2 even wear one of the wristbands at the game, right?

3 A. No. She had one, but she didn't wear it.

4 Q. Okay. And you didn't put yours on until halftime
5 because you knew that there could be an issue with you wearing
6 this?

7 A. I suppose you could look at it that way.

8 Q. And that's the same reason why you didn't put the
9 Riley Gaines poster on your Jeep until halftime, right?

10 A. That's because -- yes, that's what I thought would
11 work.

12 Q. Yeah. You were concerned that if you put it on too
13 early, Mr. Desilets or someone else would come and tell you
14 that you can't do that, right?

15 A. Yes.

16 Q. It was not really a big surprise to you when Mr.
17 Desilets came over and said, hey, Andy, you can't wear that,
18 right?

19 A. I wouldn't say it wasn't a surprise, but I didn't
20 know who was going to come over. I mean, we had the
21 superintendent at the field. We had the principal at the
22 field. We had Desilets at the field. We had Bow PD.

23 Q. And the school you said never communicated with you
24 after getting this e-mail about what your plan was, right?

25 A. The school didn't ever communicate on any of my

1 e-mails.

2 Q. And you certainly didn't tell the school, hey,
3 we're going to wear these wristbands but nothing more, we're
4 just going to silently wear the wristbands, right?

5 A. I don't think anything in your -- we failed at
6 communicating. Let's put it that way.

7 Q. So the question was you never told the school, hey,
8 this is the limit of our protest. We're going to come out
9 this day, we're going to wear these, but we're not going to
10 chant, we're not going to heckle, we're not going to protest,
11 we're not going to do any of those things, right?

12 A. Not in that case, no.

13 Q. Okay. And they had good reason to be concerned
14 that you in particular might take this a little bit further,
15 right?

16 MR. KOLDE: Objection. Calls for speculation.

17 A. No.

18 THE COURT: Overruled.

19 A. No.

20 Q. Well, for one thing, you had already sent them an
21 e-mail saying that a real leader doesn't stand by, right?

22 A. Yes. It's right there.

23 Q. And for another thing, you had tried to get into a
24 Gay-Straight Alliance meeting the year before, right, a
25 student meeting?

1 A. Do we want the full context of that?

2 Q. Is that true? You tried to get into a Gay-Straight
3 Alliance meeting, right?

4 A. I did not try to get into a Gay-Straight Alliance.
5 I tried to request what is a Gay-Straight Alliance. There's a
6 bigger history there. I don't know how far you want to go. I
7 was curious --

8 Q. If your counsel wants to, he can go into that.

9 THE COURT: You're talking over each other.

10 MR. KOLDE: Andy, listen to the question and answer
11 the question. Nothing else.

12 THE COURT: Mr. Kolde, I'll handle that. That's my
13 job. Thanks for the help, though.

14 Go ahead, Mr. Cullen.

15 Q. You were asking about the Gay-Straight Alliance?

16 A. Yes.

17 Q. And at one stage you wanted to get into the meeting
18 and Sergeant Handy had to actually stop you from going into
19 the school to the meeting, right?

20 A. No. No, that never happened.

21 Q. And in fact you posted online the identity of one
22 of the kids in the Gay-Straight Alliance, right?

23 A. If she spoke at a book review and then she was one
24 of the individuals in the public forum for a school board
25 meeting, I may have mentioned her. If she was in the club, I

1 don't know.

2 Q. So, again, the school district had a reason to be
3 concerned that your protest might go beyond simply having
4 wristbands and silently sitting by the game, right?

5 A. I don't -- no, I disagree.

6 Q. And you as you said yourself, a real leader doesn't
7 stand around -- sorry -- doesn't stand by while their players
8 are thrown into harm's way, right?

9 A. I tried from August until September to get someone
10 to have a conversation.

11 Q. And in fact a real leader makes sure that you
12 protect the students on the field before things get out of
13 hand and that student is heckled or intimidated or otherwise,
14 right?

15 A. Well, I think as a parent, you defend your daughter
16 and your family and you try to protect them from harm's way.
17 Whether Parker Tirrell was going to be the problem or some
18 other transgender player, the point is there's a precedent
19 set, and we were trying to protect -- I was trying to protect
20 my girls in some way. Because I have another one five years
21 from now that could be in the same situation, and I don't know
22 what the scenario is going to be.

23 Q. You were familiar with the XX symbol being used at
24 the Paris Olympics or not?

25 A. I didn't watch the Olympics after the opening

1 ceremonies.

2 Q. All right. And you don't know which other parents
3 may or may not have worn the wristbands?

4 A. I do not.

5 Q. And you don't know which wristbands they took
6 because they just reached into the bag and grabbed them,
7 right?

8 A. It was random.

9 Q. So it could have been the XX or it could have been
10 the NAD?

11 A. It could have been any of the three symbols.

12 Q. Okay. And when Mr. Desilets did come up and tell
13 you that you needed to take off the wristband, you already
14 understood why because you were at least half expecting this
15 to happen, right?

16 A. I guess with the information you've seen here,
17 yeah, there was some understanding of something.

18 Q. And you missed the next game, but you were back for
19 the game on September 24th, right?

20 A. Was that the Coe-Brown game?

21 Q. Well, I think of it as the Moms for Liberty game.

22 A. Oh, I'm sorry, yes. The Moms for Liberty, yes.
23 Correct.

24 Q. And a whole bunch of people came to that game,
25 right?

1 A. Correct.

2 Q. And they sat right up behind the parents at the
3 game, right, or stood really?

4 A. They were a few feet behind the line, the parents'
5 line.

6 Q. 35 to 50 people?

7 A. Approximately.

8 Q. None of whom had kids in the game?

9 A. Maybe not in that particular game, no.

10 Q. Okay.

11 A. I don't know for all the people who were there. I
12 don't know if they had a niece or a nephew. I know my aunts
13 were there with them.

14 Q. Yeah. I mean, there were too many people for you
15 to even know who all of them were, right?

16 A. I wouldn't say that. There was a significant
17 amount of people, yes.

18 Q. You posed for some selfies with them?

19 A. I did take a picture that they requested, yes. One
20 picture.

21 Q. Incidentally, you don't have any actual suspicion
22 that if you went to the game wearing just a pink wristband
23 with the breast cancer ribbon on it, that you would be told to
24 take that off, right?

25 A. I don't know.

1 Q. And you don't have any real concern that if you
2 wore just a pink jersey or pink socks or dressed head to toe
3 in pink, that somebody from the district would come over and
4 tell you you can't do that, right?

5 A. I don't know. If it was another transgender game
6 going on and you wore all pink, I don't know how they would
7 react.

8 Q. I mean, you understand that the issue here is your
9 XX symbols, not the color?

10 A. You mean the female -- biological female XX is an
11 issue?

12 Q. I'm saying you understand that that's the issue the
13 district has, not the color pink?

14 A. No. I had no idea.

15 Q. So this is the first time you're learning that that
16 could be a possibility?

17 A. This court case has been presenting it, yes.

18 Q. I mean, because you took pictures of -- or you
19 found pictures of the cheerleaders wearing pink, and you have
20 no reason to think any of them were in trouble for wearing
21 pink, right?

22 A. I didn't, but I saw the picture.

23 Q. And similar with the band?

24 A. There's a picture of the band?

25 Q. You submitted an exhibit that is a picture of band

1 people wearing pink I think.

2 A. I don't remember that one.

3 Q. Your counsel submitted as exhibits in their
4 exhibits here a series of photographs of cars in the parking
5 lot. Did you look at those?

6 A. I did.

7 Q. One of them has a license plate that says boy girl?

8 A. It did.

9 Q. That's a relative of yours, right?

10 A. By marriage.

11 Q. I couldn't -- I'm not sure if I was able to get Mr.
12 Fellers to answer this or not, but is it your contention
13 that --

14 A. I say by marriage, but it's a very distant -- I
15 mean, we don't spend Thanksgivings together.

16 Q. You're staying as far away from this person as
17 possible. I understood --

18 A. No. Just in context, I didn't want you to think
19 that we have Christmas dinners or anything. We are distant
20 relatives.

21 MR. KOLDE: Objection. Nonresponsive. Move to
22 strike the witness's nonresponsive answer.

23 THE COURT: Well, granted. It's totally
24 irrelevant.

25 MR. KOLDE: Just answer the question.

1 THE WITNESS: Yes.

2 THE COURT: Mr. Kolde, I'll handle it.

3 MR. KOLDE: I understand, your Honor.

4 THE COURT: No more interruptions, please.

5 Q. With respect to this question about what it is
6 you're looking to do with respect to signs, is it your hope to
7 get a ruling from this court that you can walk around the
8 parking lots at any time of the day with whatever political
9 message you want to on a sign that you held above your head?

10 A. I think it's in line with the First Amendment
11 right. That's what we're fighting for. I think as long as
12 it's within the realm of our legal system for displaying, then
13 it should be allowed.

14 MR. CULLEN: If I could just have a moment, your
15 Honor?

16 THE COURT: Of course.

17 (Pause)

18 MR. CULLEN: I don't have any other questions.
19 Thank you, your Honor.

20 I think Mr. Ducharme might come next.

21 THE COURT: Mr. Ducharme.

22 We'll go till 4:30.

23 MR. DUCHARME: Okay. I will not take anywhere
24 near.

25 THE COURT: No, I hope.

1 MR. CULLEN: I wasn't that long.

2 MR. DUCHARME: Oh, that wasn't what I mean, Mr.
3 Cullen.

4 THE COURT: Aren't you done?

5 MR. CULLEN: I am done.

6 THE COURT: Okay.

7 CROSS-EXAMINATION

8 BY MR. DUCHARME:

9 Q. Mr. Foote, I would like to pick up right where you
10 left off in answering Mr. Cullen's question about the signs.

11 You're here fighting for your First Amendment
12 rights, correct?

13 A. What's that?

14 Q. You are here fighting for your First Amendment
15 rights?

16 A. Correct.

17 Q. And you're fighting with the town of Bow about
18 their policies and the way they implement those policies,
19 correct, or the Bow School District I should say?

20 A. Yes.

21 Q. And they sent you a no trespass order?

22 A. Correct.

23 Q. And they are enforcing the school rules and
24 policies, correct, the policies of the school board and school
25 district?

1 A. Yes.

2 Q. And you know that Mr. Rossetti is not an elected,
3 appointed, or employed official of the Bow School District,
4 correct?

5 A. I don't know the relationship for how they're
6 employed.

7 Q. Okay. Do you have any basis to say that he is an
8 employee or an official?

9 A. I mean, he's at a lot of the games.

10 Q. He's a ref?

11 A. Yes.

12 Q. You've seen him at games?

13 A. Yes.

14 Q. You've seen him at basketball games?

15 A. Yes, I think. I don't know. I've seen him at
16 soccer games. I know that.

17 Q. But, again, to cover quickly what I covered with
18 Mr. Fellers, you don't know the interrelationships between
19 referees and the NHIAA and the school districts, correct?

20 A. I don't know the financial, if that's what you're
21 asking.

22 Q. And what this case is about mostly is your very
23 important First Amendment rights, correct?

24 A. That's why we're here, yes.

25 Q. Your lawyers have dropped your claim for monetary

1 damages, correct? I assume you know that.

2 A. I know they dropped the value, yes.

3 Q. Well, you know they've dropped the claim for
4 compensatory damages?

5 A. I mean, we did talk about that, yes.

6 Q. Okay. I don't want to know what you talked about.
7 You know it happened?

8 A. Yes.

9 Q. And that what the vast majority of the time and
10 effort going into this case is about is your hope to get
11 injunctive relief, right?

12 A. Correct.

13 Q. You weren't really damaged by what happened on
14 September 17th, were you, by Mr. Rossetti?

15 MR. KOLDE: Objection insofar as it calls for a
16 legal conclusion, and it does sound legal, your Honor.

17 THE COURT: I understand the issues. He's damaged
18 if his rights were infringed.

19 MR. KOLDE: Fair enough.

20 Q. So you in the complaint have alleged a conspiracy,
21 correct, that includes Mr. Rossetti?

22 A. In our group, yes.

23 Q. And you in your declaration filed in support of the
24 request for both a temporary restraining order and this
25 preliminary injunction have said that Mr. Rossetti threatened

1 a forfeit, correct?

2 A. The specific words, I would have to look at the
3 video.

4 Q. I'm not talking about the video. I'm talking about
5 the pleadings filed in this court, including your declaration
6 which is document 14-4 signed under oath.

7 A. Right.

8 Q. You recall saying under oath in that declaration,
9 "I declare under penalty of perjury that the foregoing is true
10 and correct," that you heard Steve Rossetti threaten to
11 forfeit the game. You said that, didn't you?

12 A. I heard him say that Bow could potentially forfeit
13 the game.

14 Q. You heard him say that?

15 A. I believe I did.

16 Q. Is it on the video?

17 A. I don't know.

18 Q. You heard him say it, though?

19 A. You're going to have to stop and lose the game,
20 yeah. There was some insinuation. Whether it was forfeit or
21 -- yeah, that's what I remember.

22 Q. Did you hear him say the game's over if this
23 disturbance doesn't end?

24 A. It could have been something like that.

25 Q. You don't know if game over equals forfeit, do you?

1 A. We were told up to that point if they didn't play
2 the game, they would forfeit.

3 Q. By whom?

4 A. By my daughter. By the coach I had talked to. I
5 don't know. I heard that if they didn't finish the game, they
6 would forfeit it.

7 Q. I'm sorry. I didn't see the coach or your daughter
8 come over to the sideline.

9 A. No. This was before just discussing on the field.

10 Q. You're talking about if they just hadn't showed up
11 to play?

12 A. There was a lot of discussion about these teams and
13 games and what would happen to them. I don't know the
14 specifics.

15 Q. Let's focus on the day in question here.

16 You didn't hear Mr. Rossetti threaten to forfeit
17 the game, did you?

18 A. I would have to go back and view my video.

19 Q. Okay. By the time that the body cam video picks
20 up --

21 A. My video, I'm sorry, not --

22 Q. Okay. I'm talking about the body cam video.

23 A. Okay.

24 Q. By the time that the body cam video picks up,
25 you've already taken your wristband off?

1 A. Correct.

2 Q. And you do agree that the interaction between Mr.
3 Desilets and Mr. Fellers was pretty heated, loud?

4 A. It was a passionate discussion about a topic, yes.

5 Q. So if, again, your declaration used words like
6 heated and loud, you wouldn't step back from that now, right?

7 A. It wasn't louder than Colleen Madden's -- it was
8 quieter than her comments, let's put it that way, or quieter
9 than the cheering on the sidelines during the game.

10 Q. You don't think it stood out at all?

11 A. Not compared to my vuvuzela or comments, us yelling
12 for the girls, let's go, Bow, no.

13 Q. You don't really believe that Steve Rossetti shut
14 this game down to stop your protest, do you?

15 A. Say that again.

16 Q. I said you don't believe that Steve Rossetti blew
17 the whistle and stopped this game to stop your protest, do
18 you?

19 A. I don't know.

20 Q. You don't know, do you?

21 A. I don't know the facts behind it, but it seemed
22 suspicious.

23 Q. Yeah, you've alleged it, but you don't know, do
24 you?

25 A. It would be speculation.

1 Q. Yeah, it probably is.

2 A. I'm not in his head.

3 Q. If he was a really good co-conspirator, he would
4 have come and pulled the wristband off your vuvuzela, wouldn't
5 he, but he didn't do that?

6 A. I don't understand the question.

7 Q. Yeah, I didn't think you would.

8 MR. CULLEN: Vuvuzela.

9 MR. DUCHARME: Vuvuzela. Excuse me.

10 A. No, no. I understood that part.

11 Q. You saw that he reacted to a commotion on the
12 sideline, right?

13 A. Did he react to the commotion on the sideline
14 before or after that? Yeah.

15 Q. Weren't you there?

16 A. I was there, but I don't know. Was it enough to
17 see? I don't know.

18 Q. Or hear?

19 A. I mean, if I was watching the game watching for
20 fouls on the field, I don't know if what happened on the
21 sideline was enough to trigger --

22 Q. Well, to that end, you don't know what referees are
23 trained to do when there is a commotion on the sideline, do
24 you?

25 A. Well, I'm not a referee, no.

1 Q. Are you saying to the Court that you think what was
2 going on and shown in the videotape, the body cam tape with
3 Mr. Fellers and Mr. Desilets, was like a nice, friendly, quiet
4 conversation?

5 A. I think a police officer and four people huddled
6 around one individual would probably indicate something is
7 going on.

8 Q. A bit of a commotion, right?

9 A. Well, somebody was creating one, yes.

10 Q. Yeah. Well, again, whoever was creating it, Mr.
11 Rossetti didn't blow his whistle and come over until after
12 that commotion, correct?

13 A. I don't know why he blew his whistle or what caused
14 him to.

15 Q. I didn't ask you if you know why. I asked about
16 when. You were there and you've seen the body cam video. It
17 happened after the commotion, didn't it?

18 A. There were people on the sidelines, yes.

19 Q. Do you not understand my question or would you
20 rather just not answer it?

21 A. I don't know if the commotion caused him to come
22 over. I don't know if there was enough --

23 Q. I'm asking about the sequence of events.

24 Isn't it correct that he blew his whistle and got
25 involved after the commotion? A simple question.

1 A. The discussion with Mr. Fellers, yes.

2 Q. Okay. From there forward you observed that the
3 officer and Mr. Desilets and Mr. Fisk finished their doings
4 with Mr. Fellers and he left, correct?

5 A. Kyle was rejected from the game.

6 Q. But you watched it all happen?

7 A. We just did, yes.

8 Q. You watched it that day, too?

9 A. Yes.

10 Q. And then the focus became Mr. Rash, correct?

11 A. Yes.

12 Q. And then you saw that at the end of that when the
13 large coach whose name I have forgotten -- Mr. Burke, I think.

14 A. Ben Forbes.

15 Q. Forbes. Mr. Forbes radioed Mr. Desilets, and that
16 once Mr. Rash's wristband came off Mr. Desilets said, okay,
17 we're going to play?

18 A. Yes. I assume, yes. He went to Mike and said,
19 Mike, the wristband is off, or something to that effect, yes.

20 Q. All right. Thank you.

21 THE COURT: Any redirect?

22 MR. KOLDE: Very brief, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. KOLDE:

25 Q. Mr. Foote, we met the other day and you saw some

1 photographs of vehicles with political and other bumper
2 stickers that were -- that you had gathered for us; is that
3 correct?

4 A. Yes.

5 Q. All right. And I'll represent to the Court and the
6 parties that we're talking here about the photographs that are
7 agreed admitted Exhibits 27, 28, 29, and 30. It's a gray car
8 with political bumper stickers, a black car with political
9 bumper stickers, a blue car with political bumper stickers,
10 and a silver car with political bumper stickers.

11 Have you seen those vehicles parked on Bow School
12 District property?

13 A. I have.

14 Q. Okay. I don't want to replot all the ground with
15 the e-mail that you sent to Mike Desilets the morning of the
16 game with Plymouth, that is, the morning of September 17, the
17 morning that you also added XX to the wristbands, but what
18 were you hoping to get from -- it's fair to say that you were
19 concerned about what you called a lack of leadership; is that
20 correct?

21 A. Correct.

22 Q. What were you hoping to elicit from Mike Desilets
23 or the other Bow officials that you weren't getting that was
24 contributing to your frustration?

25 A. Not a single person in the administration ever had

1 any conversation with a parent, with the team, the coaches
2 didn't, nothing had ever happened. This was just like we're
3 just going to play the game the way it is. I wanted to have a
4 discussion.

5 Q. You wanted to have communication?

6 A. Yes.

7 Q. And did Mike Desilets try to communicate with you?

8 A. No.

9 Q. Marcy Kelley?

10 A. No.

11 Q. Mr. Cullen asked you about people coming and
12 grabbing the wristbands out of the bag.

13 A. Yes.

14 Q. And, again, I just want the record to be clear.
15 Did you see anyone on the sidelines at that game on September
16 17th, any adult, anyone else, wearing one of the NAD
17 wristbands?

18 A. I did not.

19 Q. Okay. Mr. Cullen asked you about the signs you
20 want to display, okay, and so language is important.

21 Are you wanting to display a sign like the Riley
22 Gaines sign that you had displayed on your car on September
23 17th?

24 A. Yes. Similar signs to that and the ones that are
25 in the Facebook post.

1 Q. All right. I need you to be very specific, Mr.
2 Foote, because this is very important.

3 What do you mean by that?

4 A. In respect to the signs, I want to be able to post
5 signs that support protecting women in women's sports.

6 Q. All right. So you're not just asking to be able to
7 display random political messages about other topics?

8 A. No, no. In this instance, no, not at all.

9 Q. Okay. And are you asking to display signs that
10 name trans players?

11 A. That was not my intent. You can see from my signs
12 I didn't even try that. That was not it.

13 Q. Just answer the question.

14 A. No.

15 Q. Okay. Are you asking to display signs that say
16 harassing things about trans players?

17 A. No.

18 Q. Okay.

19 MR. KOLDE: Nothing further, your Honor.

20 THE COURT: All right. I have a few, if you don't
21 mind.

22 I have to decide this, and it's a complicated
23 issue. It's nuanced. It's not easy.

24 I think I understand Mr. Feller's position and your
25 position.

1 MR. KOLDE: Your Honor, I can barely hear you. I'm
2 sorry, your Honor.

3 THE COURT: I'm sorry.

4 I think I understand your position and Mr.
5 Fellers's position to be we oppose people classified at birth
6 as males, boys, from participating on female girls' high
7 school sports teams. That's your view?

8 THE WITNESS: Yes. Yes. Generally speaking, yes.

9 THE COURT: And a lot of people hold that view.
10 Obviously, the legislature passed a statute to that effect
11 which the governor signed.

12 But I'm curious about you say you were not
13 protesting. Now, back when I was young people protested the
14 Vietnam War. If you asked a protester, they might say I'm not
15 protesting the war. I'm supporting peace. I don't see a
16 difference there.

17 And you're saying I'm not protesting that a
18 transgender student is playing on a girls' team. I'm
19 supporting girls' sports.

20 Is there a distinction there that you can draw
21 that's meaningful? You're against transgender girls playing
22 on girls' sports teams?

23 THE WITNESS: I'm against women having to compete
24 against biological males.

25 THE COURT: Same thing, right? I support women's

1 sports in that I oppose transgender girls playing on girls'
2 sports teams. Is that fair?

3 You want to say it's got nothing to do with
4 directing harassment or heckling or denigrating trans girls,
5 it's got to do with supporting girls' sports teams that are
6 biological girls, right?

7 THE WITNESS: Well, there's a lot more to it, your
8 Honor, and I --

9 THE COURT: Well, tell me about it then.

10 THE WITNESS: Well, I don't want to get in too
11 deep.

12 THE COURT: Get as deep as you like.

13 THE WITNESS: It comes down to the bottom line of
14 the dignity, the safe places, the awards, the varsity teams.
15 It comes down to girls losing what they fought for. My
16 daughter played for 13 years.

17 THE COURT: Losing unfairly because of what?

18 THE WITNESS: Genetically, boys are more stronger,
19 faster, recover faster, and it's just not fair to a girl who's
20 fought her entire life to get to a place of captain on a
21 soccer team to potentially lose that seat because now a boy is
22 on the team who beats them out.

23 THE COURT: Yeah, so the problem is -- in your
24 position the problem is that transgender girls are on the team
25 or are participating in the sport.

1 THE WITNESS: Well, there's more to it than that
2 also, sir.

3 THE COURT: Well, tell me.

4 THE WITNESS: No one has had a conversation in the
5 entire state of New Hampshire about the issue.

6 In the military you have standards. You set
7 standards for anything, whether it's passing a PT test,
8 whether it's your height and weight, you have standards on how
9 you would evaluate things.

10 There is not a single standard other than the fact
11 that Parker Tirrell identifies as a female and now he can play
12 on the team, and that's dangerous. My signs, as you can see,
13 were for protecting women that had been hurt. These were all
14 examples of either a loss of a title or a loss of physical
15 injury, and the only time anything is done is when that
16 happens.

17 THE COURT: So do you not agree that wearing the
18 pink wristband with the XX was your way of communicating I
19 oppose the transgender girl playing on this girls' sports
20 team?

21 THE WITNESS: That's one way of looking at it.

22 THE COURT: Tell me why that is. Because that's
23 the normal way to look at it.

24 THE WITNESS: Well, I looked at it because I have a
25 daughter on the team who's fought for 13 years, and I'm

1 supporting her and her accomplishments.

2 THE COURT: Yes, but you're supporting her by
3 opposing what you think is getting in the way of her fair
4 competition, right?

5 THE WITNESS: I suppose that's another way to look
6 at it.

7 THE COURT: Well, I notice that you -- and here's
8 the problem. It's the message. What message is being sent by
9 this protest? What's the message? And I know you probably
10 sincerely think I'm not sending a harassing, demeaning,
11 degrading, exclusionary message. I'm sure you in your mind
12 think I'm just stating my legitimate position on a
13 controversial social political issue, right?

14 THE WITNESS: Well, I wasn't, like, saying I hate
15 trans. That's for sure.

16 THE COURT: That's what I mean. You don't think
17 that.

18 But here's the thing. You don't wear those --
19 first of all, you haven't really -- you've done it a little
20 bit. Mr. Fellers didn't at all. You refer to Parker Tirrell
21 as he, or you refer to transgender girls playing on these
22 teams as boys. Like you seem to go out of your way to suggest
23 that there's no such thing as a trans girl or you don't accept
24 it, you don't recognize it. Is that part of your position?

25 THE WITNESS: No. That's just like when you're

1 learning a new language.

2 THE COURT: Okay.

3 THE WITNESS: I'm sorry if I --

4 THE COURT: All right. So here's the thing.

5 You're wearing this statement of your political issue on this
6 issue just at school activities. Is there any evidence -- do
7 you wear it to Walmart? Do you wear it to work? Do you wear
8 it to church? Do you wear it anywhere else?

9 THE WITNESS: The time we're wearing it now is a
10 chance where it actually applies.

11 THE COURT: But the question is do you wear it
12 anywhere else.

13 THE WITNESS: I do. Yeah, I've had it on my Jeep
14 on the dashboard.

15 THE COURT: Do you wear it anywhere?

16 THE WITNESS: Oh, do I personally wear it?

17 THE COURT: Yeah, other than at the school
18 activities. It seems like it's only school activities.

19 THE WITNESS: No. I've had it on around Concord.

20 THE COURT: You have?

21 THE WITNESS: I have.

22 THE COURT: What's the audience that you're trying
23 to reach with your protest? What's the audience? Is it the
24 kids playing, is it the teachers and administrators, is it the
25 other parents, or is it the public in general? What is the

1 audience?

2 THE WITNESS: Those that support House Bill 1205.

3 THE COURT: Okay. So you're going to the school
4 events where these issues arise because there's school
5 athletics, and your audience is people that also might support
6 the bill that you support?

7 THE WITNESS: If I was wearing it outside of a
8 school activity, it would be the other parents that support
9 the same issue.

10 THE COURT: Your counsel made a point of asking you
11 about the supposedly harassing, trans-exclusionary pink XX
12 wristband. Now, supposedly harassing, that's an effect
13 question, is it harassing in effect. I gather your view is I
14 was certainly not intending to harass a transgender player,
15 right?

16 THE WITNESS: No. Not at all.

17 THE COURT: But trans-exclusionary, that is
18 consistent with your protest. That's what you want to have
19 happen, right? You want trans girls not playing on girls'
20 sports.

21 THE WITNESS: I want an open discussion about how
22 we do it.

23 THE COURT: So you weren't protesting the fact that
24 trans girls were allowed to play on girls' teams?

25 THE WITNESS: My honest at the start was a fear

1 that somebody is going to get hurt.

2 THE COURT: No, no, no. But the cause of -- your
3 fear of someone getting hurt is because in your view allowing
4 trans girls to play on girls' teams will result in injury.

5 THE WITNESS: My fear is all the things I've spoken
6 of, yes. At some point there will be some sort of injury,
7 whether it's physical, whether it's mental, whether it's
8 something else.

9 THE COURT: Sure. So the object of your protest
10 was I don't like the fact that a trans girl is playing on a
11 high school girls' team?

12 THE WITNESS: Well, the bigger one is I didn't like
13 the fact my daughter was forced to play without even being
14 asked. It was not her choice.

15 THE COURT: So you weren't protesting the fact that
16 a trans girl was allowed to play on a girls' team?

17 THE WITNESS: I was supporting my daughter's female
18 sport. I wasn't -- I know you're saying it's not that way.

19 THE COURT: Well, we went around that circle, but
20 you're supporting her by saying I support you by taking the
21 public position that trans girls should not be allowed to play
22 against you. It's all about the trans girls playing on girls'
23 teams, isn't it?

24 THE WITNESS: You're not going to -- honestly, if
25 there wasn't a trans girl trying to play on a girls' team, it

1 wouldn't be an issue. You're right.

2 THE COURT: All right. The answer is right.
3 That's what you're protesting against.

4 Okay. So trans-exclusionary, that's not something
5 you walk away from. That's what you want to see and you want
6 that to happen, trans girls excluded.

7 Pink associated with female is girls, right?

8 THE WITNESS: Yes.

9 THE COURT: XX, the female chromosome, right?

10 THE WITNESS: Yes.

11 THE COURT: And did it ever occur to you that
12 someone who is trans who's playing on a girls' team might see
13 that XX wristband that's pink under these circumstances as
14 sort of a statement that there are only two genders, boy,
15 girl, you know, female, that there aren't legitimate
16 transgenders, that maybe people who identify as trans are not
17 valid as human beings, you know, that sort of thing? Did it
18 ever occur to you that somebody might see it that way?

19 THE WITNESS: Honestly, I thought of it as if he's
20 a trans female, then pink might be a color he likes. I don't
21 know. The XX could be taken another way. I don't know.

22 THE COURT: So you didn't think that way?

23 THE WITNESS: I didn't. I didn't spend that much
24 time thinking about that, no. That wasn't my concern.

25 THE COURT: Okay.

1 THE WITNESS: It was safety. Really it was safety
2 of female and female sports. Everything I've ever said is
3 based upon that.

4 THE COURT: Okay. And I got the impression --
5 again, you're entitled to your viewpoint, and a lot of people
6 hold it. Don't take this as criticism. You're entitled to
7 have that viewpoint.

8 I guess the other -- the last thing I guess I
9 wanted to ask you was from your testimony I got the
10 impression -- I think maybe Mr. Ducharme asked you the
11 questions, or maybe it was Mr. Cullen.

12 When you went to the game that day, you fully
13 understood that when you pulled those armbands out and put it
14 on, there was likely to be a confrontation or a reaction. I
15 don't mean violent or anything, but you understood the school
16 having issued what it issued, somebody was going to come up
17 and say that's a problem. That's why you didn't put it on
18 till after the first half. That's why you --

19 THE WITNESS: I won't argue that. I suspected
20 something would happen.

21 THE COURT: All right. Again, these are
22 complicated issues and nuanced issues, and sometimes a message
23 is sent that you didn't intend, and sometimes that's the
24 issue, not that you were there to specifically harass a
25 particular student or cause mental anxiety or stress or

1 suffering or anything like that, but sometimes the message you
2 think you're sending might not be the message that's being
3 sent.

4 All right. Any questions based on mine?

5 MR. KOLDE: Yes, your Honor.

6 FURTHER EXAMINATION

7 BY MR. KOLDE:

8 Q. Mr. Foote, did the armband, excuse me, the
9 wristband to you have more than one meaning or only one
10 meaning?

11 A. I'm not sure if I understand the question. One
12 meaning as in I support women's --

13 Q. You did not intend to harass or intimidate
14 a transgender --

15 A. Yes, I did not at all.

16 Q. Listen to my question carefully. Listen, please.
17 Did the wristband to you that you were wearing --

18 A. Yes, sir.

19 Q. -- have only one meaning or did it have more than
20 one meaning?

21 A. To me it had one meaning.

22 Q. What was the one meaning?

23 A. I was supporting women's sports.

24 Q. Okay. Do you know what it meant to Kyle Fellers?

25 A. As far as I know, it was the same.

1 Q. No. Do you know what it meant to Kyle Fellers?

2 A. No. I don't know exactly what it meant to Kyle
3 Fellers.

4 MR. KOLDE: All right. Thank you. Nothing
5 further.

6 THE COURT: Thank you. Any others?

7 MR. CULLEN: No, your Honor.

8 MR. DUCHARME: No, your Honor.

9 THE COURT: All right. It's 4:20. Why don't we
10 stop.

11 Any possibility we're going to finish evidence
12 tomorrow?

13 MR. CULLEN: I would hope we would finish tomorrow.

14 MR. KOLDE: We have one tomorrow.

15 I mean, we're just doing a PI motion, right, your
16 Honor? Oh, when we're going to finish evidence?

17 THE COURT: Yeah. How many witnesses?

18 I'm sorry. You can step down if you would like.

19 THE WITNESS: Thank you, sir.

20 MR. KOLDE: We're not going to call Ms. Foote
21 unless something comes up that we don't expect. We're going
22 to call Eldon Rash, and then our direct case will consist of
23 calling Marcy Kelley and Mike Desilets.

24 THE COURT: Is it Desilets?

25 MR. KOLDE: Desilets, sorry.

1 And we're not planning on calling Matt Fisk unless
2 something changes. And we're not entirely sure about
3 Rossetti, but at this point we're still planning on calling
4 him.

5 So I would expect that we would be done in the
6 morning, mid morning sometime.

7 THE COURT: Oh, mid morning is fine.

8 MR. KOLDE: Lawyers are notoriously bad
9 about estimating.

10 THE COURT: Mr. Cullen, how many witnesses do you
11 have?

12 MR. CULLEN: So mid morning seems a little
13 ambitious, but really other than the witnesses he's named,
14 that's all, except we might call Matt Fisk if he does not. I
15 don't think -- at this point I don't anticipate anyone else
16 from our list being called.

17 So, in other words, I would cross-examine my own
18 witnesses after they've been directed by --

19 THE COURT: Good. And how long do you think?
20 You're saying mid morning is optimistic.

21 MR. CULLEN: Well, I think I'll be 45 minutes at
22 the most, maybe 45, 35 minutes with Ms. Kelley. Attorney
23 Shirley is going to handle Mr. Desilets, but I would say
24 that's probably a fair estimate.

25 MR. KOLDE: Double it.

1 MR. SHIRLEY: I would say 30 minutes.

2 MR. CULLEN: Yeah, so we're thinking 30 to 45
3 minutes per witness from our discussion.

4 THE COURT: Mr. Ducharme?

5 MR. DUCHARME: Your Honor, there is a tiny chance I
6 would call the head referee, Mr. Murphy, but he would be ten
7 minutes at the most.

8 THE COURT: Okay.

9 All the damages claims are gone, right? There's a
10 conspiracy claim.

11 MR. KOLDE: The nominal damages are still in, your
12 Honor, for past harms.

13 THE COURT: Conspiracy and retaliation?

14 MR. KOLDE: Conspiracy and retaliation, and the nub
15 of the case is still viewpoint discrimination.

16 There is an overbreadth claim, your Honor, that I
17 think we can set to one side at the moment. That is this
18 designated protest area gimmick that they -- in our view a
19 gimmick, they may disagree, that they imposed after we filed
20 the case. They have told me -- counsel has told me, well,
21 we're getting rid of that.

22 THE COURT: It's in his brief.

23 MR. KOLDE: It's in his brief, but that's just a
24 representation. There's so far no actual evidence. There's
25 been nothing in writing issued, there's been no e-mail sent

1 out, you know, indicating that.

2 And from our standpoint as far as the lawsuit is
3 concerned, that's not moot because that's voluntary cessation
4 and it's just playing games.

5 But for the preliminary injunction, I think
6 that's -- you know, that's not as important, and we're not
7 planning on focusing on that for the remainder of the hearing.

8 THE COURT: Okay. Understood.

9 All right. I'll see you tomorrow morning at 9:30.

10 (Hearing adjourned at 4:25 p.m.)
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C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings to the best of my knowledge, skill, ability and belief.

Submitted: 12-2-24 /s/ Susan M. Bateman
SUSAN M. BATEMAN, RPR, CRR